This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

18

[BOOKS PRICED] LONDON, 1878

WORKS PUBLISHED BY

MESSRS. BUTTERWORTH,

Stephen's Blackstone's Commentaries. 7th Ed. 4 vols 8vo.
Bond's Law of Bankers' Pass-Book. 2nd Edn. 12s. cloth
Underhill's Law of Torts or Wrongs. Post 8vo. 6s. cl.
Sir T. Erskine May's Parliamentary Practice. 7th Edn.
Gregory's Law of Evidence and Pleading. Third Edition.
Bailey's Bankruptcy Practice. Post 8vo. 6s. cloth.
Hodges's Outlines of Equity. 8th Edn. By Lawrence Smith.
Bayley's Law of Bankers' Cheques. 6th Edition. 8s.
Bateman's Law and Practice in Bankruptcy. 2nd Edition.
Daniell's Chancery Practice. 6th Edn. 2 vols. 8vo. cloth.
Davis's Equity Pleading, Precedents and Forms. 8vo.
Dodson's Law of Attorneys and Solicitors. 8vo. 12s. cl.
Hall's Law of Friendly Societies. 8vo. cloth.
Hammond's Law of Parties and Pleadings in Civil Actions.
Hodges's Digest and Law of Joint Stock Banks. 8vo.
Hodges's Digest of Law of Building, Public Works, Contracts.
Hodges's Law of Railway Companies. 8vo. cloth.
Hodges's Practical Conveyancing. 8vo. cloth.
Hodges and Lloyd's Bankruptcy Manual. Third Edition.
Hodges's Law of Boundaries, Fences and Party Walls. 12s.
Hodges's Law of Compensation for Land, Houses, &c.
Hodges's Law of Compensation for Tithes.
Hodges's Law of Compensation for Tithes.
Hodges's Law of Compensation for Tithes.
Wigram's Law of Discovery. 8vo. cloth.

L e 43

Cw .U .K.
X 510
S 828a 7

Mr. SERJEANT STEPHEN'S

NEW

COMMENTARIES

ON

THE LAWS OF ENGLAND.

(PARTLY FOUNDED ON BLACKSTONE.)

"For hoping well to deliver myself from mistaking, by the order and perspicuous expressing "of that I do propound, I am otherwise zealous and affectionate to recede as little from "antiquity, either in terms or opinions, as may stand with truth, and the proficience of know-"ledge."—Lord Bac. Adv. of Learning.

The Seventh Edition,

BY

JAMES STEPHEN, ESQ., LL.D.,

JUDGE OF COUNTY COURTS,

LATE PROFESSOR OF ENGLISH LAW AT KING'S COLLEGE, LONDON,

AND FORMERLY RECORDER OF POOLE.

IN FOUR VOLUMES.

VOL. IV.

LONDON:

BUTTERWORTHS, 7, FLEET STREET,

Law Publishers to the Queen's most excellent Majesty.

HODGES, FOSTER & CO., GRAFTON STREET, DUBLIN.

CALCUTTA: THACKER, SPINK & CO. BOMBAY: THACKER, VINING & CO.

MELBOURNE: GEORGE ROBERTSON.

1874.

LONDON:
PRINTED BY C. ROWORTH AND SONS,
NEWTON STREET, HIGH HOLBORN.

CONTENTS OF THE FOURTH VOLUME.

Book VI.

OF CRIMES.

CHAP. I.

OF THE NATURE OF CRIMES AND THEIR PUNISHMENTS.

	PAGE
Of the Distinction between Crimes and Civil Injuries	4
Of Misdemeanors and Felonies	7
Of the Power of Human Punishment	11
Of the End of Human Punishment	13
Of the Measure of Human Punishment	14

CHAP. II.

OF THE PERSONS CAPABLE OF COMMITTING CRIMES.

Of Persons who are not capable of committing Crimes	21
Of Infancy	23
Of Idiocy or Lunacy	25
Of Drunkenness	29
Of Misfortune or Chance	30
Of Ignorance or Mistake	*ibid.*
Of Compulsion and Necessity	31
Of the Incapacity of the Sovereign to commit Crime	36

CHAP. III.

OF PRINCIPALS AND ACCESSORIES.

Of a Principal in the First Degree	38
Of a Principal in the Second Degree	39
Of Accessories	*ibid.*
Of Accessories before the Fact	40
Of Accessories after the Fact	42
Of the Punishment of Accessories	43

CHAP. IV.

Of Offences against the Person.

	Page
Of Homicide	47
Of Justifiable Homicide	48
Of Excusable Homicide	52
Of Self-Murder	59
Of Manslaughter	63
Of Murder	66
Of Attempts to Murder	78
Of Acts causing Danger to Life or Bodily Harm	79
Of Procuring Miscarriage	83
Of Abduction of Females	84
Of Rape	85
Of Defilement or Abuse of Children	91
Of the Crime against Nature	92
Of Kidnapping and Child Stealing	93
Of Abandoning Children	94
Of Endangering Railway Passengers	95
Of Setting Spring Guns, or destructive Engines	96
Of Assaults, Batteries and False Imprisonment	97

CHAP. V.

Of Offences against Property.

Of Arson	99
Of Burglary	104
Of Sacrilege and Housebreaking	111
Of Larceny	112
Of Larceny in a Dwelling-house	123
Of Larceny in Ships, Wharfs, &c.	124
Of Larceny from the Person	*ibid.*
Of Assault with intent to Rob	127
Of Extorting Money by Threats, Accusations, &c.	129
Of Larceny or Embezzlement by Clerks, Servants, &c.	*ibid.*
Of Larceny in relation to the Post Office	135
Of Receiving Stolen Property	136
Of Malicious Mischief	138
Of Forgery	141
Of Obtaining Money by False Personation	146
Of Obtaining Money by False Pretences	*ibid.*
Of Fraudulent Concealment of Deeds, or Falsification of Pedigree	147

CHAP. VI.

Of Offences against the Government.

	Page
Of Treason	149
Of Misprision of Treason	165
Of Discharging Fire Arms, &c. at the Queen	166
Of Treason Felony	167
Of Scandal against the Sovereign	168
Of Præmunire	*ibid.*
Of Contempts against the Title of the Sovereign	185
Of Contempts against the Crown's Ecclesiastical Supremacy	*ibid.*
Of Contempts against the Royal Palaces	186
Of Maladministration of High Officers	187
Of Selling Public Offices	188
Of Offences relating to the Coin	*ibid.*
Of Offences relating to the Royal Stores, Ships, &c.	194
Of Serving Foreign States	195
Of Desertion, or Seducing to Desert	196
Of Unlawful Oaths, and Illegal Societies	197
Of Miscellaneous Contempts against the Prerogative	199

CHAP. VII.

Of Offences against Religion.

Of Apostasy	201
Of Heresy	203
Of Blasphemy	207
Of Reviling the Ordinances of the Church	208
Of Profane Swearing	209
Of using Pretended Witchcraft, &c.	210
Of Religious Imposture	212
Of Simony	*ibid.*
Of Profanation of the Lord's Day	*ibid.*

CHAP. VIII.

Of Offences against the Law of Nations.

Of the Law of Nations	215
Of the Violation of Safe-Conducts, &c.	217
Of the Violation of the Rights of Ambassadors	219
Of Piracy	*ibid.*

CHAP. IX.

Of Offences against Justice.

PAGE
Of Stealing, Injuring and Falsifying Records 223
Of Striking, or other Outrage in the Superior Courts 224
Of Intimidation of Parties or Witnesses 226
Of Obstructing a Lawful Arrest or Process .. .. .. *ibid.*
Of Escape and Prison-breach 227
Of Rescue and aiding Prisoners to Escape 230
Of taking a Reward of Stolen Goods 231
Of Compounding of Felony 232
Of Misprision of Felony 233
Of Compounding Informations and Misdemeanors 234
Of Common Barratry 235
Of Maintenance 236
Of Champerty 237
Of Conspiracy 238
Of Perjury 242
Of Bribery 244
Of Negligence in Public Officers 246
Of Oppression and Partiality .. .. *ibid.*
Of Extortion 247

CHAP. X.

Of Offences against the Peace.

Of Riotous Assemblies 248
Of riotously Demolishing Churches, Houses, Machinery, &c. .. 250
Of Sending Letters threatening to Kill, &c. 251
Of Affrays 252
Of Riots, Routs, and Unlawful Assemblies 253
Of Tumultuous Petitioning 255
Of Forcible Entry and Detainer 256
Of Riding or going Armed, &c. 257
Of Spreading False News .. .. *ibid.*
Of False and Pretended Prophecies .. .. *ibid.*
Of Challenges to Fight 258
Of Libels .. .. *ibid.*

CHAP. XI.

Of Offences against Trade.

Of Smuggling 262
Of Frauds by Bankrupts 264

CHAP. XI.—(*continued*).

PAGE
Of Cheating in Trade 265
Of Monopoly 266
Of Assaulting or Molesting Traders 267

CHAP. XII.

OF OFFENCES AGAINST THE PUBLIC HEALTH, POLICE, OR ECONOMY.

Of Selling Unwholesome Provisions 268
Of Common Nuisances 270
Of Bigamy 277
Of Lewdness 280
Of Drunkenness 281
Of Furious Driving 282
Of Cruelty to Animals 283
Of Concealing a Birth .. .. *ibid.*
Of Taking up Dead Bodies 284
Of Refusing to serve a Public Office 285
Of Pursuing Game by Night .. .. *ibid.*
Of Vagrancy and Disorderly Conduct 287

CHAP. XIII.

OF THE MEANS OF PREVENTING OFFENCES.

Of Preventing the Commission of Crimes 290
Of Security for Keeping the Peace 293
Of Security for Good Behaviour 295

CHAP. XIV.

OF COURTS OF A CRIMINAL JURISDICTION.

Of the Courts of Criminal Jurisdiction in general 298
Of the High Court of Parliament 299
Of the Court of the Lord High Steward 302
Of the Queen's Bench 307
Of the Court of Admiralty 311
Of the Courts of Oyer and Terminer and General Gaol Delivery 313
Of the Central Criminal Court 315
Of the General Quarter Sessions 317
Of the Sheriff's Tourn 321
Of the Court Leet or View of Frankpledge .. .. *ibid.*
Of the Court of the Coroner 323
Of the Court of the Clerk of the Market .. .. *ibid.*
Of the Court of the Lord Steward of the Household 325
Of the University Courts .. .. *ibid.*

CHAP. XV.

Of Summary Convictions.

PAGE
Of Summary Proceedings generally 329
Of Proceedings under the Revenue Acts .. .. *ibid.*
Of Proceedings before Justices of the Peace 330
Of Assault Cases 331
Of the Juvenile Offenders' Acts.. 332
Of Summary Jurisdiction in Larceny 334
Of the Course of Proceedings on Summary Convictions 335
Of the Process on Attachments for Contempt 339

CHAP. XVI.

Of Arrests for Felony or Misdemeanor.

Of Arrests under Warrant 344
Of Arrest by Officers without Warrant 348
Of Arrests by Private Persons without Warrant 350
Of Arrests under Hue and Cry 351

CHAP. XVII.

Of Commitment and Bail.

Of Taking the Examination 354
Of Discharging Prisoner 355
Of Bailing.. 356
Of Committing to Gaol 358

CHAP. XVIII.

Of the several Modes of Prosecution.

Of a Presentment.. 360
Of an Indictment 361
Of an Information 373

CHAP. XIX.

Of Process: and herein of Certiorari.

Of Process on Indictment 381
Of Capias and Bench Warrant .. .. *ibid.*
Of Outlawry 383
Of Certiorari 385
Of Process upon Informations 388

CHAP. XX.

Of Arraignment and its Incidents.

PAGE
Of the Mode of Arraignment 389
Of standing Mute 391
Of Confession 394

CHAP. XXI.

Of Plea and Issue.

Of a Plea to the Jurisdiction 397
Of a Demurrer 399
Of a Plea in Abatement 400
Of a Special Plea in Bar 401
Of the General Issue 405

CHAP. XXII.

Of Trial and Conviction.

Of the antient Methods of Criminal Trial 407
Of Trial by the House of Peers 416
Of Trial by Jury .. .. *ibid.*
Of Conviction 433
Of Allowance of Expenses 435
Of Restitution of Goods 437

CHAP. XXIII.

Of Judgment and its Consequences.

Of Motion in Arrest of Judgment 440
Of pronouncing Judgment 443
Of Fines 444
Of Imprisonment 447
Of Whipping 448
Of Penal Servitude 449
Of Police Supervision 452
Of Sentence of Death 453
Of Attainder 454
Of Corruption of Blood 459
Of Forfeiture of Goods and Chattels .. .. *ibid.*
Of Differences between Forfeiture of Lands and of Goods and Chattels 460

CHAP. XXIV.

Of Reversal of Judgment.

PAGE
Of Reversing without Writ of Error 463
Of Reversing by Writ of Error 465
Of Reversing Judgment of Outlawry .. .. *ibid.*

CHAP. XXV.

Of Reprieve and Pardon.

Of Reprieve 466
Of Pardon 468

CHAP. XXVI.

Of Execution.

Of the Manner of performing Execution 478
Of the Crown's Power of altering the Punishment 480

CONCLUSION.

Of the Rise, Progress, and gradual Improvement of the Laws of England.

Of the Progress from the earliest Times to the Norman Conquest .. 482
Of the Progress from the Norman Conquest to Edward I. .. 490
Of the Progress from Edward I. to the Reformation.. 501
Of the Progress from the Reformation to the Restoration .. 506
Of the Progress from the Restoration to the Revolution 514
Of the Progress from the Revolution to the Present Time .. 517

TABLE OF STATUTES.

GENERAL INDEX.

NEW COMMENTARIES

ON

THE LAWS OF ENGLAND.

BOOK VI.

OF CRIMES.

CHAPTER I.

OF THE NATURE OF CRIMES AND THEIR PUNISHMENTS.

WE are now arrived at the sixth and last branch of the Commentaries; which treats of *public wrongs*, or *crimes*. For it will be remembered that wrongs were divided into two species; the one *private*, and the other *public* (*a*). Private wrongs, otherwise termed *civil injuries*, were the subject of the preceding Book. [We are, therefore, lastly, to proceed to the consideration of public wrongs or crimes: in pursuit of which we shall consider, firstly, the general nature of crimes and punishments; secondly, the persons capable of committing crimes; thirdly, their several degrees of guilt as principals or accessories; fourthly, the several species of crimes, with the punish-

(*a*) Vide sup. vol. I. p. 138.

[ment annexed to each by the laws of England; fifthly, the means of preventing their perpetration; and, sixthly, the method of inflicting those punishments which the law has annexed to each crime respectively.

First, as to the general nature of crimes and their punishment: the discussion and admeasurement of which forms, in every country, the code of criminal law; or, as it is more usually denominated with us in England, the doctrine of the "*pleas of the crown*," so called because the sovereign,—in whom centres the majesty of the whole community,—is supposed by the law to be the person injured by every wrong done to that community; and is therefore, in all cases, the proper prosecutor for every such offence.

The knowledge of this branch of jurisprudence, which teaches the nature, extent and degrees of every crime, and adjusts to it its adequate and necessary penalty, is of the utmost importance to every individual in the State. For, as a very great master of the crown law (*b*) has observed upon a similar occasion, no rank or elevation in life, no uprightness of heart, no prudence or circumspection of conduct, should tempt a man to conclude that he may not at some time or other be deeply interested in these researches. The infirmities of the best among us, the vices and ungovernable passions of others, the instability of all human affairs, and the numberless unforeseen events which the compass of a day may bring forth, will teach us (upon a moment's reflection), that to know with precision what the laws of our country have forbidden, and the deplorable consequences to which a wilful disobedience may expose us, is a matter of universal concern.

In proportion to the importance of the criminal law, ought also to be the care and attention of the legislature in properly forming and enforcing it. It should be founded on principles that are permanent, uniform, and universal;

(*b*) Sir Michael Foster, pref. to Rep.

[and always conformable to the dictates of truth and justice, the feelings of humanity, and the indelible rights of mankind: though it sometimes, (provided there be no transgression of these eternal boundaries,) may be modified, narrowed, or enlarged, according to the local or occasional necessities of the State which it is meant to govern. And yet either from a want of attention to these principles in the first concoction of the laws, and adopting in their stead the impetuous dictates of avarice, ambition and revenge; or from retaining the discordant political regulations which successive conquerors or factions have established in the various revolutions of government; or from giving a lasting efficacy to sanctions that were intended to be temporary, and made, (as Lord Bacon expresses it,) merely upon the spur of the occasion; or, lastly, from too hastily employing such means as are greatly disproportionate to their end, in order to check the progress of some very prevalent offence;—from some or from all of these causes it hath happened, that the criminal law is, in every country of Europe, more rude and imperfect than the civil. And even with us in England, where our Crown law is, with justice, supposed to be more nearly advanced to perfection; where crimes are more accurately defined and penalties less uncertain and arbitrary; where all our trials are in the face of the world; where torture is unknown, and every delinquent is judged by those of his equals against whom he can form no exception, nor even a personal dislike (*c*)]:—yet our criminal code was long deformed by an unwise and inhumane severity; and though

(*c*) 4 Bl. Com. p. 3. Blackstone adds, that if bills, introductory of new penal enactments, were first referred to some of the learned judges before they were entertained in parliament, it would not have been possible "that in the eighteenth "century it could ever have been "made a capital crime to break "down, however maliciously, the "mound of a fish pond whereby any "fish shall escape; or to cut down "a cherry-tree in an orchard; as "provided respectively by stat. 9 "Geo. 1, c. 22; 31 Geo. 2, c. 42. And "were even a committee appointed "but once in 100 years to revise the "criminal law, it could not have

in modern times many signal reforms have been introduced into this branch of our juridical system, even now, no candid commentator can pronounce upon it a quite unmixed encomium. We shall proceed now to consider, in the first place, the general nature of crimes; and this as regards, first, the crime itself; and, secondly, the punishment.

I. A crime is the violation of a right; when considered in reference to the evil tendency of such violation, as regards the community at large (*d*).

[The distinction of public wrongs from private—of crimes from civil injuries—seems upon examination principally to consist in this: that private wrongs, or civil injuries, are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a violation of the same rights, considered in reference to their effect on the community in its aggregate capacity (*e*). As if I detain a field from another man, to which

" continued to this hour a capital " felony to be seen for one month in " the company of persons who called " themselves, or are called Ægyp- " tians; as provided by 1 Ph. & " M. c. 4, and 5 Eliz. c. 20." It is scarcely necessary to remark, that all these sanguinary laws are now repealed. As to the two first-mentioned offences, the repeal is by 4 Geo. 4, c. 44, and 7 & 8 Geo. 4, c. 30, ss. 15, 19; as to the last, by 23 Geo. 3, c. 51, and 1 Geo. 4, c. 116.

(*d*) The definition of Blackstone (vol. iv. p. 5), is as follows: " A " crime or misdemeanor is an act " committed or omitted, in violation " of a public law either forbidding " or commanding it." But this scarcely points out the difference between a crime and a civil injury.

(*e*) The expression of Blackstone (ubi sup.) is, " A breach and viola- " tion of the public rights and duties " due to the whole community, con- " sidered as a community in its social " and aggregate capacity." We are thus presented with another definition of crime; but it is not more satisfactory than the first, for it merely raises the question of what is meant by " public rights due to " the community." If the expression is intended to exclude *private* rights due to the individual, the definition seems wrong; for a violation of such rights as these clearly amounts to a crime; as in the case of a murder or battery.

[the law has given him a right,—this is a civil injury and not a crime: for here only the right of an individual is concerned, and it is immaterial to the public which of us is in possession of the land. But treason, murder and robbery, are properly ranked among crimes; since, besides the injury done to individuals, they strike at the very being of society; which cannot possibly subsist, where actions of this sort are suffered to escape with impunity. In all cases, crime includes an injury: every public offence is also a public wrong, and somewhat more; it affects the individual, and it likewise affects the community. Thus treason in imagining the sovereign's death, involves in it conspiracy against an individual, which is also a civil injury; but as this species of treason in its consequences principally tends to the dissolution of government, and the destruction thereby of the order and peace of society, —this raises it to a crime of the highest magnitude. Murder is an injury to the life of an individual: but the law of society considers principally the loss which the State sustains by being deprived of a member, and the pernicious example thereby set for others to do the like. Robbery may be considered in the same view: it is an injury to *private* property; but were that all, a civil satisfaction in damages might atone for it: the *public* mischief is the thing for the prevention of which our laws have made it a felonious offence. In these gross and atrocious injuries, the private wrong is swallowed up in the public. We seldom hear any mention made of satisfaction to the individual, the satisfaction to the community being so very great (*f*). But there are crimes of an inferior

(*f*) There still exists, however, a remedy for the private wrong; even in cases of felony, it is only *suspended* during the prosecution for the crime. The authorities for this doctrine are collected and reviewed by the Court of Queen's Bench in the case of Stone *v.* March, 6 B. & C. 551, which was an action against the surviving partners of Fauntleroy the forger, connected with felonious transactions in which he had been engaged.

[nature, in which the public punishment is not so severe; and herein the distinction of crimes from civil injuries is very apparent. For instance, in the case of battery or beating another, the aggressor may be indicted for this, at the suit of the Crown, for disturbing the public peace, and be punished criminally by fine and imprisonment: and the party beaten, may also have his private remedy by action of trespass, for the injury which he in particular sustains; and recover a civil satisfaction in damages. So also in case of a public nuisance,—as digging a ditch across a highway—this is punishable by indictment as a common offence to the whole kingdom and all the king's subjects; but if any individual sustains any special damage thereby,—as laming his horse, breaking his carriage, or the like,—the offender may be compelled to make ample satisfaction, as well for the private injury as for the public wrong.

Upon the whole we may observe, that, in taking cognizance of all wrongs or unlawful acts, the law has a double view, viz. not only to redress the party injured, by either restoring to him his right (if possible), or by giving him an equivalent,—the manner of which was the object of our inquiries in the fifth book of these Commentaries; but also to procure to the public the benefit of society; by preventing or punishing every breach or violation of those laws which the sovereign power has thought proper to establish, for the government and tranquillity of the whole. What those breaches are, and how prevented or punished, are to be considered in the present Book.]

In ordinary language we understand, when we speak of crimes, such only as are subjects for *indictment*,—a proceeding of which we shall have occasion to speak hereafter. For such breaches of law as are not the subjects for indictment, and are punishable merely by a pecuniary penalty recoverable on a summary conviction before a justice of the peace, are not usually designated as crimes,

but by the more general term of offences (*h*). Crimes thus understood consist either of *misdemeanors* or *felonies* (*i*). The term *misdemeanor* is, properly speaking, synonymous with that of crime; though, in common usage, the word is made to denote such crimes as amount not to *felonies* (*k*). Into the nature and meaning of the latter denomination, it will be expedient to enter a little more at large.

[Felony, in the general acceptation of our English law, comprises every species of crime, which occasioned *at common law* the forfeiture of lands and goods (*l*). Treason itself, says Sir Edward Coke, was antiently comprised under the name of felony (*m*); and in confirmation of this we may observe that the statute of treasons, (25 Edw. III. c. 2,) speaking of some dubious crimes, directs a reference to parliament, that it may be there adjudged "whether they be treason or *other* felony." All treasons, therefore, strictly speaking, are felonies, though all felonies are not treason.

To explain this matter a little further: the word *felony*, or *felonia*, is of undoubted feudal origin (*n*); but the derivation of it has much puzzled the juridical lexicographers Prateus, Calvinus, and the rest; some deriving it from the Greek φηλος, an impostor or deceiver; others from the Latin *fallo, fefelli*, to countenance which they would have called it *fallonia*. Sir E. Coke, as his manner is, has given us a still stranger etymology (*o*),—that it is *crimen*

(*h*) As to offences so punishable, vide post, c. xv.

(*i*) In order to prevent any failure of justice by reason of this technical distinction, it has been provided that if upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor. (14 & 15 Vict. c. 100, s. 12.)

(*k*) As to the technical force of the words "misdemeanor" and "felony" in an indictment, see R. *v.* Powell, 2 B. & Ad. 75; Ryalls *v.* The Queen, 11 Q. B. 794; Campbell *v.* The Queen, ib. 799.

(*l*) Vide sup. vol. I. p. 442.

(*m*) 3 Inst. 15.

(*n*) See Gloss. tit. Felon.

(*o*) 1 Inst. 391.

[*animo felleo perpetratum*, with a bitter or gallish inclination. But all of them agree in the description that it is such a crime as occasioned the forfeiture of all the offender's lands or goods. And this gives great probability to Sir H. Spelman's Teutonic or German derivation of it; in which language indeed, (as the word is clearly of feudal origin,) we ought rather to look for its signification than among the Greeks and Romans.

According to Spelman, then, *fe-lon* is derived from two northern words: fee, which signifies the fief, feud, or beneficiary estate; and lon, which signifies price or value. Felony is therefore the same as *pretium feudi;* the consideration for which a man gives up his fief; as we say, in common speech, such an act is as much as your life or estate is worth. In this sense it will clearly signify the feudal forfeiture, or act by which an estate was forfeited or escheated to the lord.

To confirm this we may observe, that it is in this sense of forfeiture to the lord, that the feudal writers constantly use it. For all those acts, whether of a criminal nature or not, which at this day are generally forfeiture of copyhold estates (*p*), are styled *felonia* in the feudal law: "*scilicet per quas feodum amittitur*" (*q*). As "*si domino deservire noluerit* (*r*); *si per annum et diem cessaverit in petendâ investiturâ* (*s*); *si dominum ejuraverit, i. e. negaverit se a domino feudum habere* (*t*); *si a domino, in jus eum vocante, ter citatus non comparuerit*" (*u*): all these, with many others, are still causes of forfeiture in our copyhold estates; and were denominated felonies by the feudal constitutions. So likewise injuries of a more substantial or criminal nature were denominated felonies, that is, forfeitures; as assaulting or beating the lord (*x*),

(*p*) Vide sup. vol. I. p. 628.
(*q*) Feud. l. ii. t. 16.
(*r*) Ib. l. i. t. 21.
(*s*) Ib. l. ii. t. 24.
(*t*) Ib. t. 26, s. 3, t. 34.
(*u*) Ib. t. 22.
(*x*) Ib. l. ii. t. 24, s. 2.

[or vitiating his wife or daughter, "*si dominum cucurbitaverit, i. e. cum uxore ejus concubuerit*" (*y*). And as these contempts or smaller offences were felonies or acts of forfeiture, of course greater crimes, as murder and robbery, fell under the same denomination. On the other hand, the lord might be guilty of felony, or forfeit his seigniory to the vassal, by the same acts as the vassal would have forfeited his feud to the lord: "*si dominus commiserit feloniam, per quam vasallus amitteret feudum si eam commiserit in dominum, feudi proprietatem etiam dominus perdere debet*" (*z*). One instance given of this sort of felony in the lord, is beating the servant of his vassal, so that he lost his service; which seems merely in the nature of a civil injury, so far as it respects the vassal. And all these felonies were to be determined "*per laudamentum sive judicium parium suorum*" in the lord's court, as with us forfeitures of copyhold lands are presentable by the homage in the court baron.

Felony, and the act of forfeiture to the lord, being thus synonymous terms in the feudal law, we may easily trace the reason why,—upon the introduction of that law into England,—those crimes which induced such forfeiture or escheat of lands,—and, by a small deflexion from the original sense, such as induced the forfeiture of goods also,—were denominated felonies. Thus it was said that suicide, robbery, and rape, were felonies; i. e. the consequence of such crimes was forfeiture; till, by long use, we began to signify by the term of felony the actual crime committed, and not the penal consequence.]

Hence it follows, that capital punishment does by no means enter into the true idea and definition of felony (*a*).

(*y*) Feud. l. i. t. 5.

(*z*) Ib. l. ii. t. 26, 47.

(*a*) At common law, however, the idea of felony was in general connected with that of capital punishment; "and therefore, if a statute "makes any new offence felony, "the law implies that it shall be "punished with death, viz. by hang- "ing, as well as with forfeiture, un-

Felony may be without inflicting capital punishment, as in the cases instanced of self-murder, manslaughter, and larceny; and in the case of many other offences made felonies by statute. And at a period of our law when punishment by death was more frequent than now, instances are not wanting where an offence was capital, though, (as it worked no forfeiture of land or goods,) it was no *felony*, as in the case of heresy, by the common law (*a*). And of the same nature, was the antient punishment for standing mute without pleading to an indictment: which at the common law was capital, but without any forfeiture; and therefore such standing mute, was no felony. In short the true criterion of felony is forfeiture; and accordingly, up to a very recent time, all felonies occasioned a forfeiture of the goods and chattels of the offender, and in some cases of his lands also. But the law as to this—though still of importance to the student—has been now altered. For by the Felony Act, 1870, it has been enacted, that, after the passing of that statute, no confession, verdict, inquest, conviction, or judgment of or for any treason or felony or *felo de se* shall cause any forfeiture (*b*).

II. [The nature of crimes being thus ascertained and distinguished, we proceed in the next place to consider the general nature of *punishments;* which are evils or inconveniences consequent on crimes and misdemeanors; being devised, denounced, and inflicted by human laws in consequence of disobedience or misbehaviour in those to regulate whose conduct such laws were respectively

" less the offender prays the benefit " of clergy, which all felons are " entitled once to have, provided " the same is not expressly taken " away by statute."—4 Bl. Com. 97. As to benefit of clergy (now abolished), vide post, c. XXIII.

(*a*) Bl. Com. ubi sup.

(*b*) 33 & 34 Vict. c. 23, s. 1. This enactment concludes as follows: " provided that nothing in this Act shall affect the law of forfeiture consequent upon outlawry."

[made. And herein we will briefly consider the *power*, the *end* and the *measure* of human punishments.

1. As to the *power* of human punishment; or the right of the legislator, to inflict discretionary penalties for crimes and misdemeanors (*c*). It is clear that the right of punishing crimes against the law of nature,—as murder and the like,—is in a state of mere nature vested in every individual. For it must be vested in *somebody*, otherwise the laws of nature would be vain and fruitless, if none were empowered to put them in execution; and if that power is vested in any *one*, it must also be vested in *all* mankind, since all are by nature equal. Whereof the first murderer Cain, was so sensible, that we find him expressing his apprehensions, that *whoever* should find him would slay him (*d*). In a state of society, this right is transferred from individuals to the sovereign power; whereby men are prevented from being judges in their own causes, which is one of the evils which civil government was intended to remedy: and hence, whatever power individuals once had of punishing offences against the law of nature, is now vested in the magistrate alone; who bears the sword of justice by the consent of the whole community.

As to offences merely against the laws of society, which are only *mala prohibita* and not *mala in se* (*e*), the magistrate is also empowered to inflict coercive penalties for such transgressions: and this, again, by the consent of individuals; who, in forming societies, did either tacitly or expressly invest the sovereign power with a right of making laws, and of enforcing obedience to them when made, by exercising upon their non-observance severities adequate to the evil.

The lawfulness, therefore, of punishing such criminals is founded upon this principle,—that the law by which

(*c*) See Grotius, De J. B. et P. l. 2, c. 20; Puff. L. of Nat. and N. b. 8, c. 3.

(*d*) Gen. iv. 14.

(*e*) As to this distinction, vide sup. vol. I. pp. 35, 38.

[they suffer was made by their own consent. It is a part of the original contract into which they entered when first they engaged in society; it was calculated for, and has long contributed to, their own security (*f*).

This right, then, being thus conferred by universal consent, gives to the State exactly the same power, and no more, over all its members, as each individual member had naturally over himself or others; which has occasioned doubt, how far a human legislature ought to inflict capital punishments for *positive* offences against the municipal law only, and not against the law of nature; since no individual has naturally a power of inflicting death upon himself or others, for actions in themselves indifferent. With regard to offences *mala in se*, capital punishments are in some instances inflicted by the immediate *command* of God himself to all mankind; as, in the case of murder, by the precept delivered to Noah, (their common ancestor and representative,) "Whoso sheddeth man's blood by man shall his blood be shed" (*g*).] But as regards mere *mala prohibita*, capital punishment (supposing it to be lawful at all,) is a sanction never to be resorted to by the legislature, without the utmost circumspection (*h*). [It may be safely laid down in reference to this subject, that it is the enormity or dangerous tendency of the crime, that alone can warrant any earthly legislature in putting him to death that commits it. It is not its frequency only, or the difficulty of otherwise preventing it, that will excuse our attempting to prevent it by a wanton effusion of human blood. For though the end of punishment is to deter men from offending, it never can follow from thence that

(*f*) Vide sup. vol. I. p. 28.

(*g*) Gen. ix. 6.

(*h*) Blackstone seems neither to deny, nor to admit, the right of the legislature to inflict death in the case of mere *mala prohibita*; but he justly remarks (vol. iv. p. 11), that if there is no right to inflict it, "the guilt of blood must lie at the "door of the legislature, who mis-"interpret the extent of their war-"rant; and not at the door of the "subject, who is bound to receive "the interpretations that are given "by the sovereign power."

[it is lawful to deter them at any rate, and by any means; since there may be unlawful methods of enforcing obedience even to the justest laws. It is manifest that where the evil to be prevented is not adequate to the violence of the preventive, a ruler that thinks seriously can never justify such a law to the dictates of conscience and humanity. To shed the blood of our fellow creature is a matter that requires the greatest deliberation, and the fullest conviction of our own authority. For life is the immediate gift of God to man; which neither he can resign, nor can it be taken from him, unless by the command or permission of Him who gave it; either expressly revealed, or collected from the laws of nature or society, by clear and indisputable demonstration.

2. As to the *end*, or final cause of human punishments. This is not by way of atonement or expiation for the crime committed; for that must be left to the just determination of the Supreme Being; but as a precaution against future offences of the same kind. This is effected three ways, either by the amendment of the offender himself, for which purpose all corporal punishment, fines, and temporary exile or imprisonment are inflicted: or by deterring others, by the dread of his example, from offending in the same way, "*ut pœna* (as Tully expresses it) *ad paucos, metus ad omnes perveniat*" (*i*); which gives rise to all ignominious punishments, and to such executions of justice as are open and public: or lastly, by depriving the party injuring of the power to do future mischief; which is effected by either putting him to death, or condemning him to perpetual confinement, slavery or exile. The same one end of preventing future crimes, is endeavoured to be answered by each of these three modes of punishment. The public gains equal security, whether the offender himself be amended by wholesome correction, or whether he be dis-

(*i*) Pro Cluentio, 46.

[abled from doing any future harm; and if the penalty fails of both these effects, (as it may do,) still the terror of his example remains as a warning to other citizens. The method, however, of inflicting punishment ought always to be proportioned to the particular purpose it was meant to serve, and by no means to exceed it; therefore the pains of death and of perpetual exile, slavery or imprisonment, ought never to be inflicted but where the offender appears incorrigible; which may be collected either from a repetition of minuter offences, or from the perpetration of some one crime of deep malignity, which of itself demonstrates a disposition without hope or probability of amendment; and in such case it would be cruelty to the public to defer the punishment of such a criminal, till he had an opportunity of repeating perhaps one of the worst of villanies.

3. As to the *measure* of human punishments. From what has been observed in the former articles, we may collect that the quantity of punishment can never be absolutely determined by any invariable rule; but it must be left to the arbitration of the legislature to inflict such penalties as are warranted by the laws of nature and society, and such as appear best calculated to answer the end of precaution against future offences.

Hence it will be evident that what some have so highly extolled for its equity, the *lex talionis*, (or law of retaliation,) can never be, in all cases, an adequate or permanent rule of punishment. In some instances, indeed, it seems to be dictated by natural reason; as in the case of conspiracies to do an injury, or false accusations of the innocent (*k*). To which we may add the law of the Jews and Egyptians mentioned by Josephus and Diodorus Siculus, —that whoever, without sufficient cause, was found with any mortal poison in his possession, should himself be

(*k*) Pott. Ant. b. 1. c. 26.

[obliged to take it. But in general the difference of persons, place, time, provocation, or other circumstances, may enhance or mitigate the offence; and in such cases retaliation can never be a proper measure of justice. If a nobleman strikes a peasant, all mankind will see that, if a court of justice awards a return of the blow, it is more than a just compensation. On the other hand, retaliation may sometimes be too easy a sentence; as if a man maliciously should put out the remaining eye of him who had lost one before, it is too slight a punishment for the maimer to lose only one of his: and therefore the law of the Locrians, which demanded an eye for an eye, was in this instance judiciously altered, by decreeing, (in imitation of Solon's laws,) that he who struck out the eye of a one-eyed man, should lose both his own in return (*l*). Besides, there are very many crimes that will in no shape admit of these penalties, without manifest absurdity and wickedness. Theft cannot be punished by theft, defamation by defamation, forgery by forgery, adultery by adultery, and the like; and we may add that those instances wherein retaliation appears to be used, even by the divine authority, do not really proceed upon the rule of exact retribution, by doing to the criminal the same hurt he has done to his neighbour, and no more; but this correspondence between the crime and punishment, is a consequence from some other principle.] Murder is punished with death, as the appropriate manner of visiting an offence of the highest enormity, but not as an equivalent; for that would be expiation, and not punishment. [Nor is death always an equivalent for death; the execution of a needy decrepit assassin, is a poor satisfaction for the murder of a nobleman in the bloom of his youth, and full enjoyment of his friends, his honours and his fortune. But the reason on which this sentence is grounded seems to be, that this is the highest penalty that man can inflict; and tends

(*l*) Pott. Ant. b. 1, c. 26.

[most to the security of mankind, by removing one murderer from the earth, and setting a dreadful example to deter others; so that even this grand instance, proceeds upon other principles than those of retaliation.

We may remark that it was once attempted to introduce into England the law of retaliation, as a punishment for such only as preferred malicious accusations against others; it being enacted by stat. 37 Edw. III. c. 18, that such as preferred any suggestions to the king's great council, should put in sureties of taliation; that is, to incur the same pain that the other should have had, in case the suggestions were found untrue. But, after one year's experience, this punishment of taliation was rejected; and imprisonment adopted in its stead (*m*).

But though from what has been said, it appears that there cannot be any regular or determinate method of rating the quantity of punishment for crimes by any one uniform rule; but they must be referred to the will and discretion of the legislative power; yet there are some general principles, drawn from the nature and circumstances of the crime, that may be of some assistance in allotting to it an adequate punishment.

As, first, with regard to the object of it; for the greater and more exalted the object of an injury is, the more care should be taken to prevent that injury; and of course, under this aggravation, the punishment should be more severe.] Therefore treason, in conspiring the death of the sovereign, is made punishable with death, which is all that can be inflicted should any private subject be actually killed; and yet, generally, a design to transgress is not so flagrant an enormity as the actual completion of that design. [For evil, the nearer we approach it, is the more disagreeable and shocking: so that it requires more obstinacy in wickedness to perpetrate an unlawful action, than barely to entertain the thought of it. And it is an

(*m*) Stat. 38 Edw. 3, c. 9.

[encouragement to repentance and remorse, that it is never too late to retract; and that if a man stops even at the last stage of any crime, it is better for him than if he proceeds:] for which reason an attempt to commit an offence, is in general less penal than its actual perpetration. But in the case of a treasonable conspiracy, the object whereof is the sovereign, the bare intention, where there is any overt act, that is, anything in the conduct of the parties to prove that it was entertained by them, will deserve the highest degree of severity; not because the intention is equivalent to the act itself, but because the greatest rigour is no more than adequate to a treasonable purpose of the heart, and there is no greater left to inflict upon the actual execution itself(*o*).

Again: the violence of passion or temptation may sometimes alleviate a crime; as theft in case of hunger is far more worthy of compassion than when committed through avarice, or to supply one in luxurious excesses. To kill a man upon sudden and violent resentment, is less penal than upon cool deliberate malice. The age, education, and character of the offender; the repetition, (or otherwise,) of the offence; the time, the place, the company wherein it was committed—all these, and a thousand other incidents, may aggravate or extenuate the crime (*p*).

[Further: as punishments are chiefly intended for the prevention of future crimes, it is but reasonable that among crimes of different natures, those should be most severely punished which are the most destructive of the public safety and happiness (*q*). And among crimes of an equal malignity, those which a man has the most

(*o*) 4 Bl. Com. 15.

(*p*) Thus Demosthenes (in his oration against Midias) finely works up the aggravation of the insults he had received:—"I was abused," says he, "by my enemy in cold "blood, out of malice, not by heat "of wine, in the morning, pub-"licly before strangers, as well as "citizens; and that in the temple, "whither the duty of my office "called me."

(*q*) Beccar. c. 6.

[frequent and easy opportunities of committing; which cannot be so easily guarded against as others; and which, therefore, the offender has the strongest inducement to commit, according to what Cicero observes, "*ea sunt animadvertenda peccata maximè, quæ difficillimè præcaventur*" (*r*).]

Hence it is, that to steal a handkerchief or other trifle privately from the person of another has always been dealt with more severely than a more open theft, though of much greater value,—as of a load of corn, standing in a field (*s*). [And in the Isle of Man this rule was formerly carried so far, that to take away an ox or an ass was there no felony, but a trespass; because of the difficulty, in the little territory, to conceal them or carry them off; but to steal a pig or a fowl, (which is easily done,) was a capital crime, and the offender punishable with death (*t*).

Lastly, as a conclusion to the whole, we may observe, that punishments of unreasonable severity, especially when indiscriminately inflicted, have less effect in preventing crimes and amending the manners of a people, than such as are more merciful in general, yet properly intermixed with due distinctions of severity. It is the sentiment of an ingenious writer, who seems to have well studied the springs of human action, that crimes are more effectually prevented by the *certainty* than by the *severity* of punishment (*u*). For the excessive severity of laws,—says Montesquieu (*x*)—hinders their execution:—when the punishment surpasses all measure, the public will frequently, out of humanity, prefer impunity to it. Thus, also, the stat. 1 Mary, st. 1, c. 1, recites in its preamble, "that the state "of every king consists more assuredly in the love of the "subject towards their prince than in the dread of laws "made with rigorous pains; and that laws made for the

(*r*) Pro Sexto Roscio, 40.
(*s*) Vide post, c. v.
(*t*) 4 Inst. 285.
(*u*) Beccar. c. 7.
(*x*) Sp. L. b. 6, c. 18.

["preservation of the commonwealth, without great pe-"nalties, are more often obeyed and kept than laws "made with extreme punishments." Happy had it been for the realm, if the subsequent practice of that deluded princess, in matters of religion, had been correspondent to the sentiments of herself and parliament, in matters of state and government. We may further observe, that sanguinary laws are a bad symptom of the distemper of any state, or at least of its weak constitution. The laws of the Roman kings, and the twelve tables of the *decemviri*, were full of cruel punishments: the Porcian law, which exempted all citizens from sentence of death, silently abrogated them all. In this period the republic flourished; —under the emperors severe punishments were revived— and then the empire fell.

It is, moreover, absurd and impolitic, to apply the same punishments to crimes of different malignity. A multitude of sanguinary laws, (besides the doubt that may be entertained concerning the right of making them,) do likewise prove a manifest defect in the wisdom of the legislative, or the strength of the executive power. It is a kind of quackery in government, and argues a want of solid skill, to apply the same universal remedy, the *ultimum supplicium*, to every case of difficulty. It is, it must be owned, much *easier* to extirpate than to amend mankind; yet that magistrate must be esteemed both a weak and a cruel surgeon, who cuts off every limb, which, through ignorance or indolence, he will not attempt to cure. It has been, therefore, ingeniously proposed, that in every state a scale of crimes should be formed, with a corresponding scale of punishments, descending from the greatest to the least (*y*); but if that be too romantic an idea, yet at least a wise legislator will mark the principal divisions, and not assign penalties of the first degree to offences of an inferior rank. Where men see no dis-

(*y*) Beccar. c. 6.

[tinction in the nature and gradations of punishment, the generality will be led to conclude there is no distinction in the guilt (*z*).]

(*z*) 4 Bl. c. 18. Blackstone concludes these remarks with some just invectives on that frequency of capital punishment, which disgraced the English law at the time he wrote. He says "It is a melancholy "truth that among the variety of "actions which men are daily liable "to commit, no less than 160 have "been declared by act of parliament "to be felonies without benefit of "clergy, or, in other words, to be "worthy of instant death. So dread-"ful a list, instead of diminishing, "increases the number of offenders. "The injured, through compassion, "will often forbear to prosecute; "juries, through compassion, will "sometimes forget their oaths, and "either acquit the guilty or mitigate "the nature of the offence; and "judges, through compassion, will "respite one-half of the convicts, "and recommend them to the royal "mercy. Among so many chances "of escape, the needy and hardened "offender overlooks the multitude "that suffer; he boldly engages in "some desperate attempt to relieve "his wants or supply his vices; and "if unexpectedly the hand of jus-"tice overtake him, he deems him-"self peculiarly unfortunate in fall-"ing at last a sacrifice to those "laws, which long impunity has "taught him to contemn."

This exposure of the impolicy as well as inhumanity of our system in regard to punishment, might well have led to its earlier amendment. That reform, which is mainly due to the exertions of Sir Samuel Romilly towards the close of the reign of George the third, may now be said to be complete; but it owes its consummation to the reign of our present gracious sovereign.

CHAPTER II.

OF THE PERSONS CAPABLE OF COMMITTING CRIMES.

[HAVING in the preceding chapter considered in general the nature of crimes and punishments, we are next led in the order of our distribution to inquire what persons are or are not *capable* of committing crimes; or, which is the same thing, who are exempted from the censures of the law upon the commission of those acts which in other persons would be severely punished. In the process of which inquiry, we must have recourse to particular and special exceptions; for the general rule is, that no person shall be excused from punishment for disobedience to the laws of his country, excepting such as are expressly defined and exempted by the laws themselves.

All the several pleas and excuses which protect the committer of a forbidden act, from the punishment which is otherwise annexed thereto, may be reduced to this single consideration,—the want or defect in *will.* An involuntary act, as it has no claim to merit, so neither can it induce any guilt: the concurrence of the will, when it has its choice either to do or to avoid the fact in question, being the only thing that renders human actions either praiseworthy or culpable. Indeed, to make a complete crime cognizable by human laws, there must be both a will and an act.] For though, *in foro conscientiæ,* a fixed design or will to do an unlawful act is almost as heinous as the commission of it, yet in general, and except in the rare case in which the party confesses such a design, no human tribunal has any means of discovering

its existence, where it has not been carried out into an external action. [It is besides impossible, in any case, to ascertain that conscience might not possibly have recovered its power in time to prevent the actual perpetration of the offence; for which reasons, in all temporal jurisdiction, an *overt* act, or some open evidence of an intended crime, is necessary, in order to demonstrate the depravity of the will, before the man is liable to punishment. And as a vicious will without a vicious act is no civil crime, so, on the other hand, an unwarrantable act without a vicious will is no crime at all. So that, to constitute a crime against human laws, there must be, first, a vicious will; and, secondly, an unlawful act consequent upon such vicious will.

Now there are three cases in which the will does not join with the act. I. Where there is a defect of understanding. For where there is no discernment there is no choice; and where there is no choice there can be no act of the will, which is nothing else than a determination of one's choice to do or to abstain from a particular action; he therefore that has no understanding can have no will to guide his conduct. II. Where there is understanding and will sufficient residing in the party, but not called forth and exerted at the time of the action done, which is the case of all offences, committed by chance or ignorance. Here the will sits neuter, and neither concurs with the act nor disagrees with it. III. Where the action is constrained by some outward force and violence. Here the will counteracts the deed; and is so far from concurring with, that it loathes and disagrees to, what the man is obliged to perform. It will be the business of the present chapter briefly to consider the several species of defect in will, as they fall under some one or other of these general heads; as infancy, idiotcy and lunacy, which fall under the first class; misfortune and ignorance, which may be referred to the second; and com-

[pulsion or necessity, which may properly rank in the third.

I. Under the first division we will first consider the case of *infancy* or non-age; which is a defect of the understanding. Infants under the age of discretion, ought not to be punished by any criminal prosecution whatever (*a*). What the age of discretion is, has been variously determined by various nations. The civil law distinguished the age of minors,—or those under twenty-five years old,—into three stages: *infantia*, from the birth till seven years of age; *pueritia* from seven to fourteen; and *pubertas*, from fourteen upwards. The period of *pueritia*, (or childhood,) was again subdivided into two equal parts; from seven to ten and a half, was *ætas infantiæ proxima:* from ten and a half to fourteen, was *ætas pubertati proxima.* During the first stage of infancy, and the next half stage of childhood, *infantiæ proxima*, minors were not punishable for any crime. During the other half stage of childhood, (approaching to puberty,) from ten and a half to fourteen, they were indeed punishable, if found to be *doli capaces*, or capable of mischief; but with many mitigations, and not with the utmost rigour of the law. During the last stage, (of the age of puberty, and afterwards,) minors were liable to be punished, as well capitally as otherwise (*b*).

The law of England does, in some cases, privilege an infant under the age of twenty-one, as to certain misdemeanors: and particularly in cases of omission, as in not repairing a bridge or a highway, or other similar offences (*c*); for not having the command of his fortune till twenty-one, he wants the capacity to do those things which the law requires. But where there is any notorious

(*a*) Hawk. P. C. b. 1, c. 1, s. 2. Infancy, in reference to *civil* cases, has been treated of, sup. vol. II. pp. 62, 303—306.

(*b*) Ff. 29, 5, 14, 50, 17, 111, 47, 2, 23.

(*c*) 1 Hale, P. C. 20, 21, 22.

[breach of the peace, a riot, battery or the like (which infants, when full grown, are at least as liable as others to commit,) or any perjury or cheating (*d*),—for these an infant above the age of fourteen is equally liable to suffer, as a person of the full age of twenty-one.

With regard to more heinous crimes our law is still more minute and circumspect; distinguishing with greater nicety the several degrees of age and discretion. By the antient Saxon law, the age of twelve years was established for the age of possible discretion, when first the understanding might open (*e*). And from thence until fourteen, it was *ætas pubertati proxima*, in which the infant might or might not be guilty of a crime, according to his natural capacity or incapacity. This was the dubious stage of discretion; but, under twelve it was held that he could not be guilty in will, neither after fourteen could be supposed innocent, of any capital crime which he in fact committed. But by the law, as it now stands, and has stood at least since the time of Edward the third, the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment. For one lad of eleven years old, may have as much cunning as another at fourteen; and in these cases our maxim is that "*malitia supplet ætatem.*" Under seven years of age, indeed, an infant cannot be guilty of felony (*f*); for then a felonious discretion is almost an impossibility in nature; but at eight years old it is laid down that he may be guilty of felony (*g*). Also, above seven and under fourteen, though an infant shall be *primâ facie* adjudged to be *doli incapax* (*h*), yet if it appear to the court and jury that he was *doli capax*, and could discern between good and evil, he may be convicted and be sentenced to suffer death.

(*d*) Bac. Ab. Infancy, H.

(*e*) Wilk. Leg. Ang.-Sax. LL. Athelstan.

(*f*) Mir. c. 4, s. 16; 1 Hal. P. C. 27. See Marsh v. Loader, 14 C. B., N. S. 535.

(*g*) Dalt. Just. c. 147.

(*h*) See R. v. Owen, 4 C. & P. 236.

[Thus besides more antient examples there was an instance where a boy of eight years old was tried in the seventeenth century at Abingdon for firing two barns; and it appearing that he had malice, cunning, and revenge, he was found guilty, condemned, and hanged accordingly (*i*). Thus also, in still later times, a boy of ten years old was convicted on his own confession of murdering his bedfellow, there appearing in his whole behaviour plain tokens of a mischievous discretion; and, as the sparing this boy merely on account of his tender years might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject of capital punishment (*k*). But, in all such cases, the evidence of that malice, which is to supply age, ought to be strong and clear beyond all doubt and contradiction (*l*).] After an infant has attained fourteen, he is presumably *doli capax*, and has no privilege by reason of his non-age, except in cases of omission and the like, as already noticed (*m*)—and at twenty-one, when infancy ceases, no privilege whatever in respect of age is recognized by law.

[Another case in which the defect of understanding excuses from guilt, is that of an *idiot* or a *lunatic*; for the rule of law as to the latter, (which may be easily adapted also to the former,) is that "*furiosus furore solum punitur*" (*n*). In criminal cases, therefore, idiots and lunatics are not chargeable for their own acts, if committed when under these incapacities; no, not even for treason itself (*o*). Also, by the common law if a man

(*i*) Emlyn on 1 Hal. P. C. 25.

(*k*) Foster, 72.

(*l*) Of the particular crime of *rape*, an infant under the age of fourteen cannot be convicted; and here, therefore, the doctrine *malitia supplet ætatem* does not apply.

(*m*) Vide sup. p. 23.

(*n*) As to the state of the law relative to idiots and lunatics in general, vide vol. I. pp. 474, 475; vol. II. pp. 62, 508—514.

(*o*) 3 Inst. 6.

[in his sound memory commits a capital offence, and, before arraignment becomes mad, he ought not to be arraigned for it; because he is not able to plead with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of nonsane memory, execution shall be stayed; for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution (*p*).] And special provisions, of the same tendency, are now made by statute; for by 39 & 40 Geo. III. c. 94, it is enacted, that if a person, charged with any offence, be brought up to be discharged for want of prosecution, and appear to be insane, the court may order a jury to be impanelled to try the sanity; and, if they find him insane, may order him to be kept in custody till the pleasure of the Crown be known;—that if a person, indicted for any offence, appear insane, the court may (on his arraignment) order a jury to be impanelled to try the sanity; and if they find him insane, may order the finding to be recorded, and the insane person to be kept in like manner; and that if, upon the trial for treason, murder or felony, insanity at the time of committing the offence is given in evidence, and the jury acquit, they must be required to find specially, whether he was insane at the time of the commission of the offence, and whether he be acquitted on that account; and if they find in the affirmative, the court may order him to be kept in like manner till the Crown's pleasure be known (*q*).

(*p*) 1 Hale, P. C. 34.

(*q*) As to asylums for *criminal lunatics*, see 23 & 24 Vict. c. 75, amended by 30 Vict. c. 12. See also 14 & 15 Vict. c. 81, as to the removal to England, and confinement there, of persons tried in India, and acquitted on the ground of insanity.

Moreover, by 27 & 28 Vict. c. 29 (*r*), if any person confined in prison under any charge or sentence (whether of *death* or of lighter degree) shall appear to be insane, and that fact be duly certified by two of the visiting justices or otherwise, a secretary of state may direct two or more physicians or surgeons to inquire into the alleged insanity; and if they shall find him to be insane, and certify accordingly, may issue his warrant to convey such person to the proper asylum for the reception of such insane persons.

[In the bloody reign, indeed, of Henry the eighth, a statute was made, which enacted that if a person, being *compos mentis*, should commit high treason, and after fall into madness, he might be tried in his absence, and should suffer death, as if he were of perfect memory (*s*). But this savage and inhuman law was repealed by the statute 1 & 2 Ph. & M. c. 10. For, as is observed by Sir Edw. Coke (*t*), "the execution of an offender is, for example, *ut pœna ad paucos, metus ad omnes perveniat*;" but so it is not when a madman is executed; but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be of no example to others.]

On the other hand, however, it is not every kind or degree of insanity, that will exempt a man from responsibility for his acts; and it may be laid down in general, that a partial unsoundness of mind will be no excuse. "It is very difficult, indeed," as Lord Hale observes, "to define the invisible line that divides perfect and "partial insanity; but it must be duly weighed and "considered both by the judge and jury, lest on the one "side there be a kind of inhumanity towards the defects "of human nature, or on the other side too great an

(*r*) By this Act a previous statute on the same subject, 3 & 4 Vict. c. 54, was in part repealed.

(*s*) 33 Hen. 8, c. 20.

(*t*) 3 Inst. 6.

"indulgence given to great crimes" (*u*). The line of distinction referred to by Hale, has never yet been fully traced. The judges, in a modern case, however, gave it as their opinion (*x*), that if a man who takes another's life appears to have known at the time that he was acting contrary to law, his being under an insane delusion that he was thereby redressing some supposed grievance or producing some public benefit, will not exempt him from the guilt of murder; neither will he be exempted by being under an insane delusion as to *facts;* provided the supposed facts, if real, would not have justified the act;

(*u*) Some of the principal cases in which the defence of unsoundness of mind, in criminal charges, has been discussed, are Arnold's case, 16 St. Tr. by Howell, 764; Lord Ferrers' case, 19 ibid. 947; Hadfield's case, Collinson on Lun. 480; Parker's case, ibid. 477; Bowler's case, ibid. 673; Bellingham's case, ib. Addend. 636; Offord's case, 5 C. & P. 168; Oxford's case, 9 C. & P. 533; R. *v.* Higginson, 1 C. & K. 129; and Macnaughten's case, 10 Cl. & Fin. 200.

(*x*) This opinion was given in answer to certain questions propounded to the judges by the House of Lords, in reference to the discussion in that house occasioned by Macnaughten's case, in the year 1843. (See 10 Cl. & Fin. above cited.) On the same occasion the judges said, that the question that has been generally left to the jury in cases of this description is, whether the accused at the time of doing the act *knew the difference between right and wrong;* but that the more correct question is, whether he *had a sufficient degree of reason to know that he was doing an act that was wrong.* Unless the law, however, is to be considered as conclusively settled by this authority, it would seem to be a still more correct question *whether he committed the act under the influence of any insane delusion, disguising from him its murderous character;* for, if he *did*, then, (whether the delusion was upon matter of opinion or matter of fact,) it is difficult to assent to the doctrine that a consciousness only that he was acting *wrong*, or *contrary to law*, would warrant convicting him for murder. At all events, it seems scarcely consistent with humanity, under such circumstances, to carry the capital sentence into effect. In Lord Erskine's celebrated speech in defence of *Hadfield*, the case is put of a lunatic destroying a man under the belief that he is a potter's vessel, and with the design of inflicting a malicious injury on the property of a third person, whom he believes to be the owner of the vessel; and Lord Erskine argues, that it would be impossible, in such a case, to convict for murder. (As to Hadfield's case, see Collinson on Lunacy, p. 480.)

but that, on the other hand, he will be exempted by such delusion as last mentioned, where the facts, if real, would have justified the act.

[Again: as to artificial, voluntarily contracted madness by *drunkenness* or intoxication, which depriving men of their reason, puts them in a temporary phrenzy,—our law looks upon this as an aggravation of the offence, rather than as an excuse for any criminal misbehaviour (*y*). "A "drunkard," says Sir Edward Coke, "who is *voluntarius* "*dæmon*, hath no privilege thereby; but what hurt or "ill soever he doth, his drunkenness doth aggravate it: "*nam omne crimen ebrietas et incendit et detegit*" (*z*). It hath been observed that the real use of strong liquors, and the abuse of them by drinking to excess, depend much upon the temperature of the climate in which we live. The same indulgence which may be necessary to make the blood move in Norway, would make an Italian mad. "A German, therefore," says the President Montesquieu, "drinks through custom, founded upon consti- "tutional necessity; a Spaniard drinks through choice, "or out of the mere wantonness of luxury; and drunken- "ness," he adds, "ought to be more severely punished, "where it makes men mischievous and mad, as in Spain "and Italy, than where it only renders them stupid and "heavy, as in Germany and more northern countries" (*a*). And accordingly, in the warm climate of Greece, a law of Pitacus enacted, "that he who committed a crime, "when drunk, should receive a double punishment: one "for the crime itself, and the other for the ebriety which "prompted him to commit it" (*b*). The Roman law, indeed, made great allowances for this vice: "*per vinum delapsis capitalis pœna remittitur*" (*c*). But the law of

(*y*) See Beverley's case, 4 Rep. 125; Reniger *v.* Fogossa, Plow. 19; R. *v.* Carroll, 7 C. & P. 145.
(*z*) 1 Inst. 247.
(*a*) Sp. L. b. 14, c. 10.
(*b*) Puff. L. b. 8, c. 3.
(*c*) Ff. 49, 16, 6.

[England, considering how easy it is to counterfeit this excuse, and how weak an excuse it is (though real), will not suffer any man thus to privilege one crime by another.

II. Another deficiency of will is, where a man commits an unlawful act by *misfortune* or *chance*, and not by design. Here the will observes a total neutrality, and does not co-operate with the deed: which therefore wants one main ingredient of a crime. Of this, when it affects the life of another, we shall find more occasion to speak hereafter: at present only observing, that if any accidental mischief happens to follow from the performance of any *lawful* act with due caution, the party stands excused from all guilt (*d*).] But if a man, by doing anything *unlawful*, (at least if it be *malum in se*, and not merely *malum prohibitum*,) or by doing anything lawful but without due caution,—produce a consequence which he did not foresee or intend, as the death of a man or the like, his want of foresight shall be no excuse, but he is criminally guilty of whatever consequence may follow.

[*Ignorance* or *mistake* is another defect of will; when a man intending to do a lawful act, does that which is unlawful. For here the deed and the will acting separately, there is not that conjunction between them which is necessary to form a criminal act. But this must be an ignorance or mistake in fact, and not an error in point of law. As if a man, intending to kill a thief or housebreaker in his own house, by mistake kills one of his family, this is no criminal action (*e*): but if a man thinks he has a right to kill a person excommunicated or outlawed, wherever he meets him, and does so, this is wilful murder. For a mistake in point of law which every person of discretion not only may, but is bound and presumed to know, is in criminal cases no sort of defence. "*Ignorantia juris, quod quisque tenetur scire, neminem excusat*" (*f*),

(*d*) 1 East, P. C. c. 5, s. 86.
(*e*) Cro. Car. 538; 1 Hale, P. C. 42.
(*f*) See R. v. Bailey, R. & R. C. C. 1.

[is as well the maxim of our own law as it was of the Roman (*g*).

III. A third kind of defect of will is, that arising from *compulsion* and inevitable *necessity*. These are a constraint upon the will, whereby a man is urged to do that which his judgment disapproves; and which, it is to be presumed, his will (if left to itself) would reject. As punishments are therefore only inflicted for the abuse of that free will which God hath given to man, it is highly just and equitable that a man should be excused for those acts which are done through unavoidable force and compulsion.

Of this nature, in the first place, is the obligation of *civil subjection;* whereby the inferior is constrained by the superior to act contrary to what his own reason and inclination would suggest: as when a legislator establishes iniquity by law, and commands the subject to do an act contrary to religion or sound morality. How far this excuse will be admitted *in foro conscientiæ*, or whether the inferior in this case is not bound to obey the Divine rather than the human law, it is not our business to decide; though the question, perhaps, among the casuists, will hardly bear a doubt. But, however that may be, obedience to the laws in being, is undoubtedly a sufficient extenuation of civil guilt before the municipal tribunal. The sheriff who burnt Latimer and Ridley in the bigoted days of Queen Mary, was not liable to punishment from Elizabeth, for executing so horrid an office; being justified by the commands of that magistracy, which endeavoured to restore superstition under the holy auspices of its merciless sister, persecution.

(*g*) See Ff. 22, 6, 9; Plowd. 343; 1 Hale, P. C. 42. It has been held, that it is no defence for a foreigner charged with a crime committed in England, to allege that he did not know he was doing wrong,—and this though the act with the commission of which he is charged is not criminal in his own country. (R. *v.* Esop, 7 C. & P. 456.)

(*h*) Ff. 22, 6, 9.

[As to persons in private relations, the principal case where constraint of a superior is allowed as an excuse for criminal misconduct, is with regard to the matrimonial subjection of the wife to her husband. For, though neither a son, nor a servant, are excused for the commission of any crime, (whether capital or otherwise,) by the command or coercion of the parent or master (*i*), yet in some cases the command or authority of her husband, either express or implied, will privilege a wife from punishment, even for heinous offences. Thus, if a woman commit theft, burglary or other offences against the laws of society, by the coercion of her husband; or even in his company, which the law construes a coercion; she is not held to be guilty of any crime, being considered as acting by compulsion and not of her own will (*k*): a doctrine which is at least a thousand years old in this kingdom, being to be found among the laws of King Ina, the West Saxon (*l*). And it appears that among the northern nations on the Continent, this privilege extended to any woman transgressing in concert with a man, and to any slave that committed a joint offence with a freeman: the male or freeman only being punished, the female or slave dismissed: "*proculdubio quod alterum libertas, alterum necessitas impelleret*" (*m*). But, (besides that in our law, which is a stranger to slavery, no impunity is given to servants, who are as much free agents as their masters,) even with regard to wives the rule is liable to exception in the case of murder, manslaughter and the like, —these offences being of too deep a dye to be thus excused (*n*). In treason, also, (the highest crime which a

(*i*) Hawk. P. C. b. 1, c. 1, s. 14; 1 Hale, P. C. 44, 516.

(*k*) As to this doctrine, see R. *v.* Price, 8 Car. & P. 19; R. *v.* Cruse, ib. 541; R. *v.* Brooks, 22 L. J. (M. C.) 121; R. *v.* Smith, 27 ib. p. 204; R. *v.* Wardroper, 29 ib. p. 116, et sup. vol. II. p. 272.

(*l*) Cap. 57; Wilk. 29.

(*m*) Stiern. de Jure Sueon. l. 2, c. 4.

(*n*) 1 Hale, P. C. 45, 47, 48, 516; Hawk. P. C. b. 1, c. 1, s. 11; Keyl. 31.

[member of society can, as such, be guilty of,) no plea of coverture shall excuse the wife—no presumption of her husband's coercion shall extenuate her guilt (*o*). And this, as well because of the odiousness and dangerous consequence of the crime itself, as because the husband, having broken through the most sacred tie of social community by rebellion against the state, has no right to that obedience from a wife, which he himself, as a subject, has forgotten to pay. In misdemeanors, also, we may here remark another exception to the general rule, viz., that a wife may be indicted *with* her husband for keeping a brothel. For this is an offence touching the domestic economy or government of the house, in which the wife has a principal share; and is also such an offence as the law presumes to be generally conducted by the intrigues of the female sex (*p*). And in all cases where the wife offends alone, without the company or coercion of her husband, she is responsible for her offence as much as any *feme sole*.

Another species of compulsion or necessity is what our law calls *duress per minas* (*q*); that is, threats and menaces, which induce a fear of present death or other grievous bodily harm, and which take away the guilt of many crimes and misdemeanors—at least before the human tribunal (*r*). And, therefore, in time of war or rebellion, a man may be justified in doing many treasonable acts by compulsion of the enemy or rebels, which would admit of no excuse in the time of peace (*s*).] Duress *per minas* is not, however, an excuse in every case, for though a man be desperately assaulted and threatened with death, and cannot otherwise escape than by consenting to kill an innocent person then present,—

(*o*) 1 Hale, P. C. 47.
(*p*) Hawk. P. C. b. 1, c. 1, s. 12.
(*q*) Vide sup. vol. I. p. 141.
(*r*) Fost. 14, 216; see R. *v.* Tyler, 8 C. & P. 616.
(*s*) R. *v.* Tyler, ubi sup.; 1 Hale, P. C. 51.

this will not acquit him of murder if he commits the act; for he ought rather to die himself than kill an innocent person (*t*). But in such a case, he is permitted to kill the assailant; for there the law of nature and self-defence, its primary canon, have made him his own protector. It is to be observed, too, that the compulsion which takes away guilt, must be the fear of no less than present death or grievous bodily harm (*u*); for the mere apprehension of having houses burnt or goods spoiled, is not sufficient (*x*). It must also be a just and well-grounded fear—"*qui cadere posset in virum constantem, non timidum et meticulosum*," as Bracton expresses it, in the words of the civil law (*y*).

[There is a third species of necessity, which may be distinguished from the actual compulsion of external force or fear; being the result of reason and reflection, which act upon and constrain a man's will, and oblige him to do an action, which, without such obligation, would be criminal. This is, when a man has his choice of two evils set before him, and being under a necessity of choosing one, he chooses the least pernicious of the two. Here the will cannot be said freely to exert itself, being rather passive than active; or, if active, it is rather in rejecting the greater evil than in choosing the less. Of this sort is that necessity where a man is required by the law to arrest another, or to disperse a riot, and resistance is made to his authority. It is here justifiable and even necessary to beat, or wound, or perhaps to kill, the offenders, rather than permit an escape, or the riot to continue (*z*).

(*t*) 1 Hale, P. C. 51.

(*u*) Bract. l. 3, tr. 1, c. 4; Co. Litt. 162 a, 253 b; 2 Inst. 483; Fost. 14, 216; R. *v.* Southerton, 6 East, 149.

(*x*) Bract. ubi sup.

(*y*) Ib.; Ff. 4, 2, 5, 6.

(*z*) 1 Hale, P. C. 51.

[There is yet another case of necessity, which has occasioned great speculation among the writers upon general law; viz. whether a man in extreme want of food or clothing may justify stealing either, to relieve his present necessities? And this both Grotius and Puffendorf, together with many other of the foreign jurists, hold in the affirmative; maintaining, by many ingenious, humane, and plausible reasons, that in such cases the community of goods, by a kind of tacit concession of society, is revived. And some even of our own lawyers have held the same (*a*), though it seems to be an unwarranted doctrine, borrowed from the notions of some civilians; at least it is now antiquated, the law of England admitting no such excuse at present (*b*). And this its doctrine is agreeable, not only to the sentiments of many of the wisest of the antients, particularly Cicero (*c*), who holds that "*suum cuique incommodum ferendum est, potius quam de alterius commodis detrahendum,*" but also to the Jewish law, as certified by King Solomon himself (*d*)—"If a thief steal to satisfy "his soul when he is hungry, he shall restore sevenfold, "and shall give all the substance of his house:" which was the ordinary punishment for theft in that kingdom. And this is founded upon the highest reason: for men's properties would be under a strange insecurity, if liable to be invaded according to the wants of others, of which wants no one can possibly be an adequate judge, but the party himself who pleads them. In this country, especially, there would be a peculiar impropriety in admitting so dubious an excuse: for by our laws such sufficient provision is made for the poor, that it is impossible that the most needy stranger should ever be reduced to the necessity of thieving to support nature. This case of a stranger

(*a*) De Jure B. et P. l. 2, c. 2; L. of Nat. and N. l. 2, c. 6.
(*b*) See Britt. c. 10; Mirr. c. 4, s. 16; 1 Hale, P. C. 54.
(*c*) De Off. l. 3, c. 5.
(*d*) Prov. vi. 30.

[is, by the way, the strongest instance put by Baron Puffendorf, and whereon he builds his principal arguments; which, however they may hold elsewhere, yet must lose all their weight and efficacy in England, where charity is reduced to a system, and interwoven in our very constitution. Therefore our laws ought by no means to be taxed with being unmerciful, for denying this privilege to the necessitous; especially when we consider that the sovereign, on the representation of the ministers of justice, hath a power to soften the law, and to extend mercy in cases of peculiar hardship: an advantage which is wanted in many states, particularly those which are democratical; and these have in its stead introduced and adopted, in the body of the law itself, a multitude of circumstances tending to alleviate its rigour. But the founders of our constitution thought it better to vest in the Crown the power of pardoning particular objects of compassion, than to countenance and establish theft by one general undistinguishing law.

To these several cases in which the incapacity of committing crimes arises from a deficiency of the will, we may add one more, in which the law supposes an incapacity of doing wrong, from the excellence and perfection of the person: which extend as well to the will as to the other qualities of the mind. It is the case of the *sovereign*, who by virtue of the royal prerogative is not under the coercive power of the law: which will not suppose him capable of committing a folly, much less a crime (*h*). We are, therefore, out of reverence and decency, to forbear any idle inquiries of what would be the consequence if the sovereign were to act thus and thus: since the law deems so highly of his wisdom and virtue as not even to presume it possible for him to do any thing inconsistent with his

(*h*) 1 Hale, P. C. 44.

[station and dignity; and, therefore, has made no provision to remedy such a grievance. But of this sufficient was said in a former division of this work, to which we must refer the reader (*i*).]

(*i*) Vide sup. bk. IV. pt. I. c. VI.

CHAPTER III.

OF PRINCIPALS AND ACCESSORIES.

[IT having been shown in the preceding chapter what persons are, or are not, upon account of their situation and circumstances, capable of committing crimes, we are next to make a few remarks on the different degrees of guilt among persons that are capable of offending; viz. as *principal* and *accessory*.

I. A man may be *principal* in an offence, in two degrees. A principal in the first degree is he that is the actor or absolute perpetrator of the crime: and, in the second degree, he who is present aiding and abetting the fact to be done (*a*). Which *presence* need not always be an actual immediate standing by, within sight or hearing of the fact; but there may be also a constructive presence, as when one commits a robbery or murder, and another keeps watch or guard at some convenient distance (*b*). And this rule hath also other exceptions: for, in case of murder by poisoning, a man may be a principal felon, by preparing and laying the poison, or persuading another to drink it who is ignorant of its poisonous quality, or giving it to him for that purpose (*c*);

(*a*) 1 Hale, P. C. 615. See R. *v.* Howell, 9 Car. & P. 437.

(*b*) Foster, 350. In the case of *rape*, if the prisoner was present aiding and abetting, he may in the indictment be charged as principal either in the first or the second degree. (R. *v.* Crisham, 1 Car. & M. 187.) A principal in the second degree in larceny, cannot be convicted as a *receiver*. (Queen *v.* Perkins, 21 L. J. (M. C.) 152.)

(*c*) Kel. 52; Foster, 349.

[and yet not administer it himself, nor be present when the very deed of poisoning is committed (*d*); and the same reasoning will hold, with regard to other murders committed in the absence of the murderer, by means which he had prepared beforehand, and which probably could not fail of their mischievous effect. As by laying a trap or pitfall for another, whereby he is killed; letting out a wild beast, with an intent to do mischief; or exciting a madman to commit murder, so that death thereupon ensues; in every of these cases the party offending is guilty of murder as a principal, in the first degree. For he cannot be called an accessory, that necessarily presupposing a principal; and the poison, the pitfall, the beast, or the madman, cannot be held principals, being only the instruments of death. As therefore he must be certainly guilty, either as principal or accessory, and cannot be so as accessory, it follows that he must be so as principal; and, if principal, then in the first degree: for there is no other criminal, much less a superior in the guilt, whom he could aid, abet, or assist (*e*).] It is to be observed, however, that though the law makes the distinction between principals in the first and in the second degree, yet in general the punishment inflicted upon either class of offenders is the same (*f*).

II. [An *accessory* is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either *before* or *after* the fact committed. In considering the nature of which degree of guilt, we will first examine what offences admit of accessories, and what not; secondly, who may be an accessory *before* the fact; thirdly, who may be an accessory

(*d*) 3 Inst. 138; 1 Hale, P. C. 616; Hawk. P. C. b. 2, c. 29, s 11.

(*e*) 1 Hale, P. C. 617; Hawk. ubi sup.

(*f*) See, in particular, the following enactments: 24 & 25 Vict. c. 96, s. 98; c. 97, s. 56; c. 98, s. 49; c. 99, s. 35; c. 100, s. 67; in reference to the felonies punishable under those Acts respectively.

[*after* it; and, lastly, how accessories, considered merely as such, and distinct from principals, are to be treated.

1. And, first, as to what offences admit of accessories, and what not. In treason there are no accessories, but all are principals: the same acts that make a man accessory in felony, making him a principal in treason, upon account of the heinousness of the crime (*g*). Besides, it is to be considered, that the bare intent to commit treason is many times actual treason: as imagining the death of the sovereign, or conspiring to take away his crown. And as no one can advise or abet such a crime without an intention to have it done, there can be no accessories before the fact; since the very advice and abetment amount to principal treason. In murder or other felonies, there may be accessories; except only in those offences which by judgment of law are sudden and unpremeditated, as manslaughter and the like; which therefore cannot have any accessories *before* the fact (*h*). So, too, in all crimes under the degree of felony, there are no accessories either *before* or *after* the fact; but all persons concerned therein, if guilty at all, are principals (*i*); the same rule thus holding with regard to the highest and lowest offences, though upon different reasons. In treason all are principals, *propter odium delicti;* in misdemeanors all are principals, because the law, which *de minimis non curat,* does not descend to distinguish the different shades of guilt in crimes below the degree of felony.

2. As to the second point, who may be an accessory *before* the fact: Sir Matthew Hale defines him to be one

(*g*) 3 Inst. 138; 1 Hale, P. C. 613. As to the crime of treason, vide post, c. VI.

(*h*) 1 Hale, P. C. pp. 615, 616; Evans' case, Foster, 73. But see Reg. *v.* Gaylor, 1 D. & B. (C. C.) 288.

(*i*) Hale, ubi sup.; see Moland's case, 2 Moody, C. C. R. 276; Queen *v.* Greenwood, 21 L. J. (M. C.) 127. In accordance with this rule, the 24 & 25 Vict. c. 94, s. 8, declares that "whosoever shall aid, abet, counsel, "or procure the commission of any "misdemeanor, shall be liable to be "indicted, tried and punished as a "principal offender."

[who, being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit a crime (*k*). Herein absence is necessary to make him an accessory; for if such procurer, or the like, be present, he is guilty of the crime as principal (*l*). If A. then advises B. to kill another, and B. does it in the absence of A.; now B. is principal and A. is accessory to the murder. And this holds, even though the party killed be not *in rerum naturâ* at the time of the advice given. As, if A., the reputed father, advises B., the mother of a bastard child, unborn, to strangle it when born, and she does so; A. is accessory to this murder (*m*). And it is also settled, that whoever procureth a felony to be committed, though it be by the intervention of a third person, is an accessory before the fact (*n*).] It is likewise a rule, that he who in anywise commands or counsels another to commit an unlawful act, is accessory to all that ensues upon that unlawful act, supposing at least that it was a probable consequence thereof, but not otherwise (*o*). As if A. advises B. to rob C., and B. does so accordingly, and on resistance made *kills* C., B. is guilty of murder as principal, and A. as accessory (*p*). [But if A. commands B. to burn C.'s house, and he, in so doing, commits a robbery; now A., though accessory to the burning, is not accessory to the robbery, for that is a thing of a distinct and unconsequential nature (*q*). But if the felony committed be the same in substance with that which is commanded, and only varying in some circumstantial matters;—as if

(*k*) 1 Hale, P. C. 615, 616. See 24 & 25 Vict. c. 94, s. 2; The Queen *v.* Gregory, Law Rep., 1 C. C. R. 77.

(*l*) See R. *v.* Jordan, 7 Car. & P. 432; R. *v.* Tuckwell, 1 Car. & Mar. 215.

(*m*) Dyer, 186.

(*n*) Foster, 125.

(*o*) This qualification of the rule will be found in Fost. 370. (And see 1 Hale, P. C. 617.) And it seems that in reason it must be so qualified.

(*p*) Fost. ubi sup. Blackstone, vol. iv. p. 37 (after Hale), puts the case of A. commanding B. to beat C., and B. beating him so that he dies. But this alone would perhaps not suffice to make A. accessory to the murder.

(*q*) Hawk. P. C. b. 2, c. 29, s. 22.

[upon a command to poison Titius, he is stabbed or shot, and dies;—the commander is still accessory to the murder, for the substance of the thing commanded was the death of Titius, and the manner of its execution is a mere collateral circumstance (*r*).

3. An accessory *after* the fact may be, where a person, knowing a felony to have been committed, receives, relieves, comforts or assists the felon (*s*). Therefore, to make an accessory *ex post facto*, it is in the first place requisite that he knows of the felony committed, and that it was committed by the party in question (*t*). In the next place he must receive, relieve, comfort or assist the criminal. And, generally, any assistance whatever given to a felon, to hinder his being apprehended, tried or suffering punishment, makes the assistor an accessory. As furnishing him with a horse to escape his pursuers, a house or other shelter to conceal him, or open force and violence to rescue or protect him (*u*). So likewise to convey instruments to a felon to enable him to break gaol, or to bribe the gaoler to let him escape, makes a man an accessory to the felony (*x*).] But to buy or receive stolen goods, knowing them to be stolen, does not fall within the definition of this offence; and at common law, such receiving was a misdemeanor only, because the offender received the *goods* only and not the *felon* (*y*). But this offence (as we shall see in the appropriate place) is now differently treated (*z*).

[The felony must be complete at the time of the assistance given, else it makes not the assistor an accessory. As if one wounds another mortally, and after the wound given, but before death ensues, a person assists or receives the delinquent, this does not make him accessory

(*r*) Hawk. P. C. b. 2, c. 29, s. 20.
(*s*) 1 Hale, P. C. 618.
(*t*) Hawk. ubi sup. s 32.
(*u*) Ibid. ss. 26, 27, 28.
(*x*) See 28 & 29 Vict. c. 126, ss. 37—40.
(*y*) 4 Bl. Com. p. 38.
(*z*) As to receiving stolen goods, vide post, p. 136.

[to the homicide; for till death ensues there is no felony committed (*a*). But so strict is the law where a felony is actually complete, in order to do effectual justice, that the nearest relations are not suffered to aid or receive one another. If the parent assists his child, or the child the parent, if the brother receives the brother, the master his servant, or the servant his master, or even if the husband receives his wife, who have any of them committed a felony, the receivers become accessories *ex post facto* (*b*). But a feme covert cannot become an accessory by the receipt and concealment of her husband; for she is presumed to act under his coercion; and therefore she is not bound, neither ought she, to discover her lord (*c*).

4. The last point of inquiry is, how accessories are to be treated, considered distinct from principals: and the general rule of the antient law,—borrowed from the Gothic constitutions,—is this, that accessories shall suffer the same punishment as their principals (*d*): if one be liable to death, the other is also liable; as, by the laws of Athens, delinquents and their abettors were to receive the same punishment (*e*).] With which, as regards accessories *before* the fact, the modern rule is strictly consonant; for, by 24 & 25 Vict. c. 94, s. 1, all these are to be indicted, tried, convicted and punished in all respects as if they were principal felons (*f*). [Why then, it may be asked, are such elaborate distinctions

(*a*) Hawk. P. C. b. 2, c. 29, s. 35.

(*b*) 3 Inst. 108; Hawk. ubi sup. s. 34.

(*c*) See 1 Hale, P. C. 47, 621; Reg. *v.* Good, 1 Car. & K. 185. So also a wife cannot be indicted for *receiving* goods stolen by her husband. (Reg. *v.* Brooks, 22 L. J. (M. C.) 121.) As to the doctrine of the wife's coercion by her husband, vide sup. p. 32.

(*d*) See Stiern. de Jure Goth. l. 3, c. 5.

(*e*) Pott. Antiq. b. 1, c. 26.

(*f*) This provision is a re-enactment of 11 & 12 Vict. c. 46, s. 1 (repealed by 24 & 25 Vict. c. 95). See also 24 & 25 Vict. c. 96, s. 98; c. 97, s. 56; c. 98, s. 49; c. 99, s. 35; c. 100, s. 67, in reference to the particular felonies punishable under those Acts, respectively.

[made between accessories and principals, if both are to suffer the same punishment?

For these reasons: 1. To distinguish the nature and denomination of crimes, that the accused may know how to defend himself when indicted; the commission of an actual robbery being quite a different accusation from that of harbouring the robber. 2. Because, though accessories before the fact are treated as principals, yet accessories after the fact are usually punished with less severity (*g*). 3. Because, formerly, no man could be tried as accessory till after the principal was convicted, or, at least, he must have been tried at the same time with him; though that rule is now wholly abolished (*h*).

(*g*) Accessories *after* the fact to any felony, are in general punishable with imprisonment for any term not exceeding two years, with or without hard labour; and may also be required to find security to keep the peace, or, in default, to suffer an additional imprisonment to the extent of one year. (See 24 & 25 Vict. c. 94, s. 4.) But accessories after the fact *to murder* are punishable by penal servitude for life, or not less than five years, (see 24 & 25 Vict. c. 100, s. 67, and 27 & 28 Vict. c. 47,) or to be imprisoned with or without hard labour to the extent of two years. It is the opinion of Blackstone (vol. iv. p. 39), that "if a distinction were constantly to be made between the punishments of principals and accessories even *before* the fact, the latter to be treated with a little less severity than the former, it might prevent the perpetration of many crimes, by increasing the difficulty of finding a person to execute the deed itself; as his danger would be greater than that of his accomplices by reason of the difference of his punishment." And he cites Beccaria, c. 37, in support of this doctrine.

(*h*) 1 Hale, P. C. 623; Fost. 363. The rule was abolished as to accessories before the fact by 7 Geo. 4, c. 64. And now, by 24 & 25 Vict. c. 94, (re-enacting in substance 11 & 12 Vict. c. 46, ss. 1, 3,) it is provided, that an accessory *before* the fact to any felony shall be indicted, tried, convicted, and punished, in all respects, as if he were a principal felon. It is further enacted by the same Act, that any accessory either *before* or *after* the fact may be indicted and convicted, either as such accessory together with the principal felon, or after his conviction: or may be indicted and convicted of a substantive felony, whether the principal felon shall have been convicted or not, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner as an accessory before or after the fact, (if convicted as an accessory,) may respectively be punished. (24 & 25 Vict. c. 94, ss. 1, 2, 3.)

[4. Because, though a man be indicted as accessory, and acquitted, he may afterwards be indicted as principal; for an acquittal of receiving or counselling a felon, is no acquittal of the felony itself. Yet it was formerly a matter of some doubt, whether, if a man were acquitted as principal, he could afterwards be indicted as accessory before the fact, since those offences are frequently very near allied; and therefore an acquittal of the guilt of one may be an acquittal of the other also (*i*). But that doubt has been since overruled (*k*); and it has always been clearly held, that one acquitted as principal may be indicted as accessory *after* the fact; since that is always an offence of a different species of guilt, principally tending to evade the public justice, and is subsequent in its commencement to the other. Upon these reasons, the distinction of principal and accessory will appear to be highly necessary; though the punishment is, in all cases, the same with regard to principals and accessories before the fact.]

(*i*) 1 Hale, P. C. 625, 626; Hawk. P. C. b. 2, c. 35, s. 11.

(*k*) R. *v.* Birchenough, 1 M.C.C.R. 477; R. *v.* Parry, 7 C. & P. 836.

CHAPTER IV.

OF OFFENCES AGAINST THE PERSON.

In the present chapter we are to enter, in pursuance of the distribution before laid down, upon an account of the several species of crimes and misdemeanors, with the punishments annexed to each (*a*).

And here we shall pursue in general, and so far as the nature of our criminal law permits, the same arrangement which we adopted for the illustration of the law relative to civil injuries (*b*): and shall, consequently, be led to treat —first, of offences against the *persons* of individuals; secondly, against their *property;* and thirdly, against those *public rights* which belong in common to all the different members of the commonwealth.

First, then, with respect to those crimes which affect the persons of individuals.

[Were such offences as these, and such as are committed against the property of individuals, confined to individuals only, and did they affect none but their immediate objects, they would fall absolutely under the notion of private wrongs; for which a satisfaction would be due only to the party injured: the manner of obtaining which was the subject of our inquiries in the preceding volume. But the wrongs of which we are now to treat are of a much more extensive consequence; in the first place, because they are all considered as contempts of public justice, or (what is the same thing) of the Crown which is the fountain of that justice: secondly,

(*a*) Vide sup. p. 1. (*b*) Vide sup. bk. v. c. VIII.

[because they include in them almost always a breach of the public peace: and, lastly, because, by their example and evil tendency, they threaten and endanger the subversion of all civil society. Upon these accounts it is, that, besides the private satisfaction due and given in many cases to the individual by action for the private wrong, the Government also calls upon the offender to submit to public punishment for the public crime; and the prosecution of these offences is always at the suit and in the name of the sovereign; in whom, by the tenure of our constitution, the *jus gladii*, or executory power of the law, entirely resides. Thus, too, in the old Gothic constitution, there was a threefold punishment inflicted on all delinquents: first, for the private wrong to the party injured; secondly, for the offence against the sovereign by disobedience to the laws; and, thirdly, for the crime against the public by their evil example. Of which we may trace the groundwork in what Tacitus tells us of his Germans; that, whenever offenders were fined, "*pars mulctæ regi, vel civitati, pars ipsi, qui vindicatur, vel propinquis ejus, exsolvitur*"(*c*).

Of crimes injurious to the *persons* of private subjects the principal and most important is the offence of taking away life, which is the immediate gift of the great Creator; and of which, therefore, no man can be entitled to deprive either himself or another, except in some manner either expressly commanded in, or evidently deducible from, those laws, which the Creator has given us—the Divine laws of either nature or revelation.] The first offence, therefore, to be discussed in the present chapter will be that of—

I. *Homicide*, (or destroying the life of man,) in its several stages of guilt, arising from the particular circumstances of mitigation or aggravation which attend it.

Now homicide, or the killing of any human creature, is either *free from legal guilt*,—the circumstances being such

(*c*) De Mor. Germ. c. 12.

as to render it *justifiable*, or at least *excusable;* or else it is *felonious* (*d*).

1. Justifiable homicide is of divers kinds. First, such as is occasioned by the due *execution of public justice*, in putting a malefactor to death who hath forfeited his life by the laws of this country. [This is an act of necessity, and even of civil duty; and, therefore, not only justifiable, but commendable, where the law requires it. But the law must *require* it, otherwise it is not justifiable: therefore, wantonly to kill the greatest of malefactors, (such as a felon or a traitor, attainted or outlawed,) deliberately, uncompelled and extrajudicially, is murder (*e*). For, as Bracton very justly observes, "*istud homicidium, si fit ex* "*livore, vel delectatione effundendi humanum sanguinem,* "*licet justè occidatur iste, tamen occisor peccat mortaliter,* "*propter intentionem corruptam*" (*f*). And, further, if judgment of death be given by a judge not authorized by lawful commission, and execution is done accordingly, the judge is guilty of murder (*g*). And, upon this account, Sir Matthew Hale himself, though he accepted the place of a judge of the Common Pleas under Cromwell's government, (since it is necessary to decide the disputes of civil property in the worst of time,) yet declined to sit on the Crown side at the assizes or to try prisoners, having very strong objections to the legality of the usurper's commission (*h*); a distinction, perhaps, rather too refined, since the punishment of crimes is at least as necessary to society as maintaining the boundaries of property. Also such judgments, when legal, must be executed by the proper officer or his appointed deputy: for no one else is *required* by law

(*d*) Blackstone describes homicide (vol. iv. p. 177) as of three kinds: *justifiable, excusable* and *felonious;* and this accords with the division of Hawkins; but there appears, under the existing law, to be no practical distinction between justifiable and excusable homicide (Vide post, p. 58.)

(*e*) 1 Hale, P. C. 497.

(*f*) L. 3, tr. 2, c. 4.

(*g*) Hawk. P. C. b. 1, c. 28, s. 5; Hale, ubi sup.

(*h*) Burnet *in vitam.*

[to do it; which requisition it is, that justifies the homicide. If another person doth it of his own head, it is held to be murder (*i*), even though it be the judge himself (*k*). It must, further, be executed *servato juris ordine*—it must pursue the sentence of the court. If an officer beheads one who is adjudged to be hanged, or *vice versâ*, it is murder; for he is merely ministerial, and, therefore, only justified when he acts under the authority and compulsion of the law. But if he changes one kind of death for another, he then acts by his own authority; which extends not to the commission of homicide otherwise than as according to the sentence; and besides, such licence might occasion a very gross abuse of his power.] The sovereign, indeed, may remit part of a sentence; for example, in the case of *treason*, the peculiar severities with which the sentence of death used to be accompanied, were in modern times often remitted; but such exercise of mercy was not (it will be observed) an introduction of a different punishment from that authorized by the law (*l*).

Secondly, justifiable homicide may be committed for the *advancement of public justice;* as in the following instances: 1. Where a peace officer or his assistant, in the due execution of his office, arrests or attempts to arrest one who resists, and is consequently killed in the struggle (*m*); 2. Where, in case of a riot or rebellious assembly, such officers or their assistants kill any of the mob, in the endeavour to disperse them; which is justifiable both at common law and by the Riot Act, 1 Geo. I. c. 5 (*n*); 3. Where the prisoners in a gaol assault the gaoler or officer, and he in his defence kills any of them; which is justifiable, for the sake of preventing an escape (*o*); 4. Where an officer or his assistant, in the due execution

(*i*) 1 Hale, P. C. 501; Hawk. P. C. b. 1, c. 28, s. 9.

(*k*) Dalt. Just. c. 150.

(*l*) See 4 Bl. Com. p. 92; 3 Inst. 52, 212.

(*m*) Foster, 270, 309; 1 Hale, P. C. 494.

(*n*) 1 Hale, P. C. 495; Hawk. P. C. b. 1, c. 65, ss. 11, 12.

(*o*) 1 Hale, P. C. 496.

of his office, arrests or attempts to arrest a party for felony (*p*), or for a dangerous wound given; and the party having notice thereof flies, and is killed by such officer or assistant in the pursuit (*q*); 5. Where, upon such offence as last described, a private person in whose sight it has been committed, arrests or endeavours to arrest the offender; and kills him in resistance or flight, under the same circumstances as above mentioned with regard to an officer (*r*). [But in all these cases, there must be an apparent necessity—that is, it must be shown that the party could not be otherwise secured, the riot could not be suppressed, the prisoners could not be kept in hold, unless such homicide was committed: otherwise, without such absolute necessity, it is not justifiable.

Thirdly, such homicide as is committed for the *prevention of any forcible and atrocious crime* (*s*), is justifiable by the law of nature (*t*); and also by the law of England as it stood so early as at the time of Bracton (*u*), and as it stands at the present day (*x*).] If any person attempts the robbery or murder of another, or attempts to break open a house *in the night time*, and shall be killed in such attempt, either by the party assaulted, or the owner of the house, or the servant attendant upon either, or by any other person present and interposing to prevent mischief, the slayer shall be acquitted and discharged (*y*). This reaches not to any crime unaccom-

(*p*) But the officer is not protected if he kill a man *apparently* committing a misdemeanor, though the crime be really a felony. (The Queen *v.* Dodson, 20 L. J. (M. C.) 57.)

(*q*) Fost. 271.

(*r*) Fost. ubi sup.; 2 Hale, P. C. 77, 82. As to the killing by a private person who arrests on suspicion only, and is resisted, see 2 Hale, P. C. 83, 84; Fost. 318. It seems it is not justifiable.

(*s*) Fost. 275; Hawk. P. C. b. 1, c. 28, ss. 21, 24.

(*t*) Puff. L. of N. l. ii. c. 5.

(*u*) L. 3, tr. 2, c. 36.

(*x*) See Mawgridge's case, Keyl. 128, 129.

(*y*) Fost. 274; 1 Hale, P. C. 488. This was expressly provided by the statute 24 Hen. 8, c. 5; and though that statute was repealed by 9 Geo. 4, c. 31 (now itself repealed by 24 & 25 Vict. c. 95), its repeal has made no alteration of the law as laid down in the text,—the statute of Hen. 8, having been made in affirmance of the common law. (See Fost. 275.)

panied with force,—as picking of pockets; or to the breaking open of any house *in the day time*, unless it carries with it an attempt of robbery, arson, murder, or the like (*z*). [So the Jewish law, which punished no theft with death, makes homicide only justifiable in case of *nocturnal* housebreaking: "if a thief be found breaking "up, and he be smitten that he die, no blood shall be shed "for him; but if the sun be risen upon him, there shall "blood be shed for him, for he should have made full "restitution" (*a*).

At Athens, if any theft was committed by night, it was lawful to kill the criminal, if taken in the fact (*b*): and by the Roman Law of the Twelve Tables, a thief might be slain by night with impunity; or even by day, if he armed himself with any dangerous weapons (*c*): which amounts very nearly to the same as is permitted by our own constitutions. The Roman law also justifies homicide, when committed in defence of the chastity either of one's self or relations (*d*): and so also, according to Selden, stood the law in the Jewish republic (*e*). The English law likewise justifies a woman killing one who attempts to ravish her (*f*); and so too the husband or father may justify killing a man, who attempts a rape upon his wife or daughter; but not if he takes them in adultery by consent, for the one is forcible and felonious, but not the other (*g*). And no doubt the forcibly attempting a crime of a still more detestable nature, may be equally resisted by the death of the unnatural aggressor (*h*).

(*z*) 1 Hale, P. C. 488; 1 East, P. C. c. 5, s. 44; Hawk. P. C. b. 1, c. 28, s. 23; Fost. 274; see also 24 Hen. 8, c. 5, cited sup. p. 50, n. (*y*).

(*a*) Exod. xxii. 2.

(*b*) Potter, Antiq. b. 1, c. 24.

(*c*) Cic. pro Milone, 3; Ff. 9, 2, 4.

(*d*) "*Divus Hadrianus rescripsit eum qui stuprum sibi vel suis inferentem occidit, dimittendum.*"—Ff. 48, 8, 1.

(*e*) De Legibus Hebræor. l. iv. c. 3.

(*f*) Bac. Elem. 34; Hawk. P. C. b. 1, c. 28, s. 21; Fost. ubi sup.

(*g*) 1 Hale, P. C. 485, 486.

(*h*) Blackstone here proceeds (vol. iv. p. 181) to give his opinion of the principle upon which homicide be-

[Fourthly, there is one species of justifiable homicide where the party slain is equally innocent as he who occasions his death; the justification arising from the great universal principle of self-preservation, which prompts every man to save his own life preferably to that of another, where one of them must inevitably perish (*k*). To this head belongs that case mentioned by Lord Bacon, where two persons being shipwrecked, and getting on the same plank, but finding it not able to save them both, one of them thrust the other from it, whereby he was drowned (*l*).

2. Excusable homicide is of two sorts, either *per infortunium*, by misadventure; or *se defendendo*, upon a sudden affray.

Homicide *per infortunium*, is where a man, doing a lawful act without any intention of hurt, unfortunately kills another, as where a man is at work with a hatchet, and the head thereof flies off and kills a stander-by; or where a person is shooting at a mark, and undesignedly kills a man (*m*): for the act is lawful, and the effect is

comes justifiable, when for the prevention of crime. He says, "The "one uniform principle that runs "through our own and all other laws "seems to be this, that where a "crime, in itself capital, is endea-"voured to be committed by force, "it is lawful to repel that force by "the death of the party attempting." And at the same time he combats the doctrine of Locke's Essay on Government, p. 2, c. 5, "That all "manner of force without right, "upon a man's person, puts him in "a state of war with the aggressor; "and, of consequence, being in such "a state of war, he may lawfully "kill him that puts him under this "unnatural restraint." We may be allowed, however, to question the soundness of the former as well as the latter opinion. If the former be correct, it will follow that, as rape (for example) has now ceased to be capital, the justification of homicide for the prevention of rape is also taken away; but there can be no doubt that it remains in full force.

(*k*) Blackstone says *excusable* (vol. iv. p. 186); but it seems clear that this is a case of *justifiable* and not merely excusable homicide; and it is so ranked by Hawkins, P. C. b. 1, c. 28, s. 26.

(*l*) Elem. c. 5. See also Hawk. P. C. b. 1, c. 28, s. 26.

(*m*) Hawk. P. C. b. 1, c. 29, ss. 2, 6.

[merely accidental. So where a parent is moderately correcting his child, a master his apprentice or scholar, or an officer punishing a criminal, and happens to occasion his death, it is only misadventure, for the act of correction was lawful; but if he exceeds the bounds of moderation either in the manner, the instrument, or the quantity of punishment, and death ensues, it is manslaughter at least, and in some cases, according to the circumstances, murder; for the act of immoderate correction is unlawful (*n*). Thus by an edict of the Emperor Constantine, when the rigour of the Roman law with regard to slaves began to relax and soften, a master was allowed to chastise his slave with rods and imprisonment; and if death accidentally ensued, he was guilty of no crime; but if he struck him with a club or a stone, and thereby occasioned his death; or if, in any other yet grosser manner, "*immoderate suo jure utatur, — tunc reus homicidii sit*" (*o*).

But to proceed. A tilt or tournament, the martial diversion of our ancestors, was however an unlawful act; and so are boxing and sword playing, the succeeding amusements of their posterity; and therefore if a knight in the former case, or a gladiator in the latter, be killed, such killing is manslaughter and felony (*p*). Likewise to whip another's horse, whereby he runs over a child and kills him, is held to be accidental in the rider, for he has done nothing unlawful; but manslaughter in the person who whipped him, for the act was a trespass, and at best a piece of idleness, of dangerous consequence (*q*).

(*n*) 1 Hale, P. C. 473, 474; Hawk. P. C. b. 1, c. 29, s. 5.

(*o*) Cod. l. lx. t. 14.

(*p*) Blackstone adds (vol. iv. p. 183) that "if the sovereign command or permit such diversion, it is said to be only misadventure; for then the act is lawful." (Hawk. P. C. b. 1, c. 29, s. 8.) In like manner, as by the laws both of Athens and Rome, "he who killed another in the *pancratium*, or public games authorized or permitted by the state, was not held to be guilty of homicide." (Plato de Leg. l. vii.; Ff. 9, 2, 7.)

(*q*) Hawk. P. C. b. 1, c. 29, s. 8; Ward's case, 1 East, P. C. 270.

[And in general, if death ensues in consequence of a dangerous, idle, and unlawful sport, as shooting or casting stones in a town, or the barbarous diversion of cock-throwing,—in these and similar cases the slayer is guilty of manslaughter, and not misadventure only; for these are unlawful acts (*r*).

As for homicide *se defendendo*, upon a sudden affray, —this is also excusable, rather than justifiable, by the English law. This species of self-defence must be distinguished from that just now mentioned, which is calculated to hinder the perpetration of an atrocious crime, and where the slayer is himself free from all blame (*s*); which is not only a matter of excuse, but of justification. But the self-defence of which we are now speaking, is that whereby a man may protect himself from an assault or the like, in the course of a sudden brawl or quarrel, by killing him who assaults him: in which latter case the law presumes both parties to be in some degree in fault (*t*). And this is one instance of what the law expresses by the word *chance medley*; or, as some chose rather to write it, *chaud medley*: the former of which in its etymology signifies a *casual* affray, the latter an affray in the *heat* of blood or passion; both of them of pretty much the same import: but the former is, in common speech, too often erroneously applied to any manner of homicide by misadventure; whereas it appears by the statute 24 Hen. VIII. c. 5, and our antient books, that it is properly applied to such killing as happens upon a sudden rencounter (*u*). This right of

(*r*) 1 Hale, P. C. 472; Fost. 275; Hawk. P. C. b. 1, c. 30, s. 1.

(*s*) Hawk. P. C. b. 1, c. 28, s. 24.

(*t*) Ibid. The slayer is however no longer punishable by law, though it was formerly otherwise. Vide post, p. 59.

(*u*) Blackstone (vol. iv. p. 184) defines *chance medley*, to be such killing as happens *in self-defence* in the course of a sudden brawl. But it is clear that the term equally applies, though the killing in the course of a brawl shall be such as to amount to *manslaughter*. See stat. 24 Hen. 8, c. 5; Keyl. 67; 3 Inst. 55, 59; Hawk. P. C. b. 1, c. 30, s. 1; Fost. ubi sup.

[natural defence does not imply a right of attacking; for, instead of attacking one another for injuries past or impending, men need only have recourse to the proper tribunals of justice. They cannot therefore legally exercise this right of preventive defence but in sudden and violent cases, when certain and immediate suffering would be the consequence of waiting for the assistance of the law. Wherefore, to excuse homicide by the plea of self-defence, it must appear that the slayer had no other possible, or at least probable, means of escaping from his assailant.

It is frequently difficult to distinguish this species of homicide in self-defence, upon sudden affray, from that of manslaughter in the proper legal sense of the word (*x*). But the true criterion between them seems to be this: when both parties were actually combating, at the time when the mortal stroke was given, or if the slayer was not at that time in immediate danger of death, the slayer is guilty of manslaughter (*y*): but if the slayer had not begun to fight, or having begun, declined, or endeavoured to decline, any further struggle, and afterwards, being closely pressed by his antagonist, killed him to avoid his own destruction, this is homicide excusable by self-defence (*z*). For which reason the law requires, that the person who kills another in his own defence, should have retreated as far as he conveniently or safely can, to avoid the violence of the assault, before he gives the mortal stroke (*a*); and that, not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding his brother's blood (*b*). And though it may be cowardice,

(*x*) 3 Inst. 55.

(*y*) Fost. 277.

(*z*) Ibid.

(*a*) Blackstone says (vol. iv. p. 185), "before he turns upon his assailant." But though a person retreating to the wall should give several wounds in the course of his retreat, yet if he gives no mortal one till he gets thither, it is homicide *se defendendo* only. (1 Hale, P. C. 479; Hawk. P. C. b. 1, c. 29, s. 15.)

(*b*) If a man strike another upon malice prepense, and then fly to the wall, and there kill him in his own defence, he is guilty of murder. (Hawk. P. C. b. 1, c. 29, s. 17.)

[in time of war between two independent nations, to flee from an enemy, yet between two fellow-subjects the law countenances no such point of honour: because the sovereign and his courts are the *vindices injuriarum*, and will give to the party wronged all the satisfaction he deserves (*c*). In this the civil law also agrees with ours, or perhaps goes rather farther,—"*qui cum aliter tueri se non possunt, damni culpam dederint, innoxii sunt*" (*d*). The party assaulted must therefore flee as far as he conveniently can, either by reason of some wall, ditch or other impediment, or as far as the fierceness of the assault will permit him (*e*); for it may be so fierce as not to allow him to yield a step, without manifest danger of his life, or enormous bodily harm, and then in his defence he may kill his assailant instantly. And this is the doctrine of universal justice, as well as of the municipal law (*f*).

And, as the *manner* of the defence, so is also the *time* to be considered; for if the person assaulted does not fall upon the aggressor till the fray is over, or when he is running away, this is revenge and not defence. Neither, under the colour of self-defence, will the law permit a man to screen himself from the guilt of deliberate murder; for if two persons, A. and B., agree to fight a duel, and A. gives the first onset, and B. retreats as far as he safely can, and then kills A.; this is murder, because of the previous malice and concerted design (*g*). And if A., upon a sudden quarrel, assaults B. first, and upon B.'s returning the assault, A. really and *bonâ fide* flies; and, being driven to the wall, turns again upon B. and kills him: this may be *se defendendo* according to some of our writers (*h*), though others (*i*) have thought this opinion too favourable, inasmuch as the necessity, to which he is at last reduced, originally arose from his own fault.

(*c*) 1 Hale, P. C. 481.
(*d*) Ff. 9, 2, 45.
(*e*) 1 Hale, P. C. 483.
(*f*) Puff. b. 2, c. 5, s. 13.
(*g*) 1 Hale, P. C. 479.
(*h*) Ibid. 482.
(*i*) Hawk. P. C. b. 1, c. 29, s. 17.

[Under this excuse of self-defence, the principal civil and natural relations are comprehended. Therefore master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other respectively, are excused; the act of the relation assisting, being construed the same as the act of the party himself (*k*).]

Excusable homicide, in both the species here described, was formerly considered as involving in it some degree of legal blame or punishment; and as distinguishable, in this respect, from that which was *justifiable*. In the case of misadventure the law presumed negligence, or at least a want of sufficient caution in him who was so unfortunate as to commit it: who therefore was not altogether faultless (*l*). [And as to the necessity which excuses a man who kills another in a sudden fray *se defendendo*, Lord Bacon entitles it *necessitas culpabilis* (*m*). For it was always understood, (as before remarked,) that the quarrel or assault arose from some unknown wrong, or some provocation in word or deed; and since in quarrels both parties may be, and usually are, in some fault—and as it scarce can be tried who was originally in the wrong—the law would not hold the survivor entirely guiltless. The law besides might have a further view, to make the crime of homicide more odious, and to caution men how they venture to kill another upon their own private judgment; by ordaining that he who slays his neighbour, without an express warrant from the law so to do, shall in no case be absolutely free from guilt.

Nor was the law of England singular in this respect. Even the slaughter of enemies required a solemn purgation among the Jews; which implies that the death of a man, however it happens, will leave some stain behind it. And the Mosaical law appointed certain cities of refuge for him who killed his neighbour unawares: "as if a man

(*k*) 1 Hale, P. C. 484.
(*l*) Hawk. P. C. b. 1, c. 28, s. 24.
(*m*) Elem. c. 5.

[" goeth into the wood with his neighbour to hew wood, " and his hand fetches a stroke with his axe to cut down " a tree, and the head slippeth from the helve, and lighteth " upon his neighbour that he die, he shall flee unto one of " these cities and live" (*n*). But it seems he was not held wholly blameless, any more than in the English law: since the avenger of blood might slay him before he reached his asylum; or if he afterwards stirred out of it, till the death of the high priest. In the Imperial law, likewise, casual homicide was excused by the indulgence of the emperor, signed with his own sign-manual, "*adnotatione principis:*" otherwise the death of a man, however committed, was in some degree punishable (*o*). Among the Greeks, homicide by misfortune was expiated by voluntary banishment for a year (*p*). In Saxony, a fine was paid to the kindred of the slain: which also, among the Western Goths, was little inferior to that of voluntary homicide (*q*); and formerly in France, no person was ever absolved in cases of this nature, without a largess to the poor, and the charge of certain masses for the soul of the party killed (*r*).

The penalty for an excusable homicide inflicted by our laws, is said by Sir Edward Coke to have been antiently no less than death (*s*); which, however, is with reason denied by later and more accurate writers (*t*). It seems rather to have consisted in a forfeiture; some say of all the goods and chattels, others only of part of them; by way of fine or *weregild* (*u*). Which was probably disposed of, (as in France,) *in pios usus*, according to the humane

(*n*) Numb. xxxv. and Deut. xix.

(*o*) Cod. 9, 16, 5.

(*p*) Plato de Leg. l. 9. To this expiation by banishment, the spirit of Patroclus in Homer may be thought to allude, when he reminds Achilles, in the twenty-third Iliad, that, when a child, he was obliged to flee his country for casually killing his playfellow, — "πατρὸς οὐκ ἐθέλων."

(*q*) Stiern. de Jure Goth. l. 3, c. 4.

(*r*) 4 Bl. Com. 188, cites De Morney on the Digest.

(*s*) 2 Inst. 148, 315.

(*t*) 1 Hale, P. C. 425; Hawk. P. C. b. 1, c. 29, s. 21; Fost. 282.

(*u*) Fost. 287.

[superstition of the times, for the benefit of *his* soul who was suddenly sent to his account with all his imperfections on his head. But that reason having long ceased, and the penalty, especially if a total forfeiture, growing more severe than was intended, in proportion as personal property became more considerable, the delinquent had, as early as our records will reach, a pardon and writ of restitution of his goods as a matter of course and right, only paying for suing out the same (*x*).] And in later times, to prevent this expense, in cases where the death notoriously happened by misadventure or in self-defence, the judges usually directed a general verdict of acquittal (*y*). Afterwards, by statute 9 Geo. IV. c. 31, s. 10, it was provided, that no punishment or forfeiture should be thenceforth incurred by any person who should kill another by misfortune or in his own defence, or in any other manner without felony; and though this provision was afterwards repealed, a clause to the same effect is inserted in 24 & 25 Vict. c. 100, the statute by which offences against the person are now regulated (*z*). So that all practical distinction between justifiable and excusable homicide is, under our present law, wholly done away.

3. [*Felonious* homicide is an act of a very different nature from the former; being the killing of a human creature, of any age or sex, without justification or excuse. This may be done either by killing one's self, or another man.

Self-murder,—the pretended heroism, but real cowardice, of the Stoic philosophers, who destroyed themselves to avoid those ills which they had not the fortitude to endure,—though the attempting it seems to be coun-

(*x*) Fost. 283; Hawk. P. C. b. 2, c. 37, s. 2.

(*y*) Fost. 288; 4 Bl. Com. 188; and see Christian's note at that place.

(*z*) See 24 & 25 Vict. c. 100, s. 7.

[tenanced by the civil law(*a*), yet was punished, by the Athenian law, with cutting off the hand which did the desperate deed(*b*). The law of England, also, wisely and religiously considers, that no man hath a power to destroy life, but by commission from God, the author of it. And as the suicide is guilty of a double offence, one spiritual, in invading the prerogative of the Almighty, and rushing into his immediate presence uncalled for; the other temporal, against the sovereign, who hath an interest in the preservation of all his subjects: our law has ranked this among the highest crimes,—making it a peculiar species of felony, a felony committed on one's self. And this admits of accessories before the fact, as well as other felonies; for if one persuades another to kill himself, and he does so, the adviser is guilty of murder(*c*). A *felo de se*, therefore, is he that deliberately puts an end to his own existence; and he also is so considered, who, maliciously attempting to kill another occasions his own death: as where a man shoots at another, and the gun bursts and kills himself(*d*). But if a man is killed at his own request by the hand of another, the former is not deemed in law a *felo de se*, though the latter is a murderer(*e*). In homicide committed on one's self, the party must be of years of dis-

(*a*) "*Si quis impatientiâ doloris, aut tædio vitæ, aut morbo, aut furore, aut pudore, mori maluit, non animadvertatur in eum.*"—Ff. 49, 16, 6.

(*b*) Pott. Antiq. b. 1, c. 26.

(*c*) 4 Bl. Com. p. 189; Keylw. 136. Notwithstanding this opinion of Blackstone, it was afterwards adjudged that such accessory could not be tried for murder, as his principal could not be tried. (See R. *v.* Russell, 1 Moo. C. C. R. 356; R. *v.* Laddington, 9 C. & P. 79.) But by recent statutes, and now by 24 & 25 Vict. c. 94, s. 2, an accessory either before or after the fact—as stated sup., p. 43—is made liable to be tried and convicted whether the principal felon shall or shall not be amenable to justice. It may be observed here, that if two persons mutually agree to commit suicide *together*, and accordingly take poison or the like together, and only one dies, the survivor is guilty of murder. (R. *v.* Dyson, R. & R. 523; R. *v.* Alison, 8 C. & P. 418.)

(*d*) Hawk. P. C. b. 1, c. 27, s. 4.

(*e*) Ibid. s. 6.

[cretion, and in his senses, else it is no crime. But this excuse ought not to be strained to that length to which our coroners' juries are apt to carry it, viz. that the very act of suicide is an evidence of insanity: as if every man, who acts contrary to reason, had no reason at all: for the same argument would prove every other criminal *non compos*, as well as the self-murderer.] The law very rationally judges that every melancholy or hypochondriac fit does not deprive a man of the capacity of discerning right from wrong: or rather, (to express it more correctly,) does not prevent his having a sufficient degree of reason to know that his act is wrong; which is necessary to form a legal excuse (*f*). And therefore it has been laid down that if a lunatic kills himself in a lucid interval, he is a *felo de se* as much as if he were a sane man (*g*).

[But now the question follows, what punishment can human laws inflict, on one who has withdrawn himself from their reach? They can only act upon what he has left behind him—his reputation and fortune; and this the

(*f*) Vide sup. p. 28, n. (*x*).

(*g*) 4 Bl. Com. 190; 1 Hale, P. C. 412. The views of our most eminent writers upon criminal law agree, in this respect, with Blackstone. "It is not every melancholy "or hypochondriac distemper that "denominates a man *non compos*," (says Sir M. Hale, ubi sup.,) "for "there are few who commit this "offence (of suicide) but are under "such infirmities; but it must be "such an alienation of mind that "renders them to be madmen or "frantic, or destitute of reason." And Hawkins, (b. 1, c. 27, s. 2,) lays down a similar doctrine; and reprobates the notion, which he says had unaccountably prevailed of late, that every one who kills himself must be *non compos*. It is to be observed, however, that there are many cases of suicide, in which no motive for the act appears, or can be imagined, such as can be supposed to operate upon a mind free from morbid delusion. In these circumstances the practice of juries to return a verdict of insanity, without further evidence of unsoundness of mind, does not seem fairly to fall under the censure in the text. In other kinds of murder, also, this apparent want of rational motive is of frequent occurrence; and ought, it would seem, to lead to the same conclusion. But the *danger* of acquittal on this ground, without further proof of insanity, is too obvious to require remark; and should always deter a jury from a verdict of that description, unless the circumstances be very strong and peculiar.

[law of England formerly did with the greatest severity. It acted on the former by an ignominious burial in the highway, with a stake driven through his body, and without Christian rites of sepulture; on the latter by a forfeiture of all his goods and chattels to the Crown, hoping that his care for either his own reputation or the welfare of his family would be some motive to restrain him from so desperate and wicked an act.] But the only consequences now are, the deprivation of Christian rites. For by 4 Geo. IV. c. 52, s. 1, it was provided, that it shall not be lawful for the coroner to direct the interment of a *felo de se* in any public highway; but he shall direct him to be interred,—without any stake being driven into his body,—in the churchyard or other burying ground; and that, within twenty-four hours after the inquisition, and between nine and twelve at night: it being declared, however, that this shall not authorize the rites of Christian burial. As to the forfeiture—while it remained in force—it had relation to the time of the act done in the felon's lifetime, which was the cause of his death. [And therefore if husband and wife were possessed jointly of a term of years in land, and the husband drowned himself,—the land was forfeited to the Crown, and the wife lost the survivorship. For by the act of casting himself into the water, he forfeited the term, which gave a title to the Crown prior to the wife's title by survivorship; which could not accrue till the instant of her husband's death (*h*).] But forfeiture in this species of felony has now, as in other kinds, been wholly abolished by the 33 & 34 Vict. c. 23, (the Felony Act of the year 1870,) to which we have already made frequent reference (*i*).

(*h*) Finch, L. 216.

(*i*) Even prior to this Act, the forfeiture which accrued in the case of a *felo de se* was often remitted by the crown. Blackstone remarking, (vol. iv. p. 190,) that "though "it must be owned that the letter "of the law borders a little on se- "verity, yet it is some alleviation "that the power of mitigation is "left in the breast of the sovereign, "who, upon this (as on all other

[The other species of criminal homicide is, that of killing another man. But in this there are also degrees of guilt, which divide the offence into *manslaughter* and *murder*. The difference between which may be partly collected from what has been incidentally mentioned in the preceding articles: and principally consists in this, that manslaughter, when voluntary, arises from the sudden heat of the passions; murder, from the wickedness of the heart.

First. *Manslaughter* is, therefore, thus defined (*k*): the unlawful killing of another, without malice, either express or implied (*l*): which may be either voluntarily, upon a sudden heat; or involuntarily, but in the commission of some unlawful act. These were called, in the Gothic institutions, "*homicidia vulgaria; quæ aut casu, aut etiam sponte committuntur, sed in subitaneo quodam iracundiæ calore et impetu*" (*m*): and hence it has been held that in manslaughter there can be no accessories before the fact (*n*); because it must be done without premeditation.

As to the first or *voluntary* branch: if upon a sudden quarrel in the way of chance medley (*o*), two persons fight, and one of them kills the other, that is manslaughter; and so it is, if they upon such an occasion go out and fight in a field; for this is one continued act of passion (*p*), and the law pays that regard to human frailty, as not to put a hasty and a deliberate act upon the same footing with regard to guilt. So also if a man be greatly provoked, as by pulling his nose, or other great indignity, and immediately kills the aggressor, though he is not excusable

" occasions), is reminded by the oath " of his office, to execute judgment " in mercy."

(*k*) 1 Hale, P. C. 466.

(*l*) In an indictment for manslaughter, the charge should be that " the defendant did feloniously kill " and slay the deceased," and it is unnecessary to set forth the manner or means. (24 & 25 Vict. c. 100, s. 6.)

(*m*) Stiern. de Jure Goth. l. 3, c. 4.

(*n*) Vide sup. p. 40.

(*o*) Vide sup. p. 54.

(*p*) Hawk. P. C. b. 1, c. 31, s. 29.

[*se defendendo*, since there is no absolute necessity for doing it to preserve himself; yet neither is it murder, for there is no previous malice; but it is manslaughter (*q*). But in this, and in every other case of homicide upon provocation, if there be a sufficient cooling time for passion to subside and reason to interpose, and the person so provoked afterwards kill the other, this is deliberate revenge, and not heat of blood; and accordingly amounts to murder (*r*). So if a man takes another in the act of adultery with his wife, and kills him directly on the spot; though this was allowed by the laws of Solon (*s*), as likewise by the Roman civil law if the adulterer was found in the husband's own house (*t*),—and also among the antient Goths (*u*),—yet in England it is not absolutely ranked in the class of justifiable homicides, as in the case of forcible rape; but it is manslaughter (*x*). It is, however, the lowest degree of it; and therefore in such a case the court directed the burning in the hand, formerly inflicted for manslaughter and other felonies not punished with death, to be gently inflicted; because there could not be a greater provocation (*y*). Manslaughter therefore on a sudden provocation, differs from excusable homicide *se defendendo* on a sudden affray, in this; that in the one case there is an apparent necessity for self-preservation to kill the aggressor; in the other there is no necessity at all, being only a sudden act of revenge (*z*).

The second branch, or *involuntary* manslaughter, differs also from homicide excusable by misadventure, in this;—that misadventure always happens in consequence of a lawful act, but this species of manslaughter in consequence of an unlawful one. As if two persons play at sword and buckler, (unless by the king's command,) and

(*q*) Kelyng, 135.
(*r*) Fost. 296.
(*s*) Plut. in Vit. Solon.
(*t*) Ff. 48, 5, 24.
(*u*) Stiern. de Jure Goth. l. 3, c. 2.
(*x*) 1 Hale, P. C. 486.
(*y*) Sir T. Raym. 212.
(*z*) Vide sup. p. 54.

[one of them kills the other; this is manslaughter, because the original act was unlawful: but it is not murder, for the one had no intent to do the other any personal mischief (*a*). So where a person does an act, lawful in itself, but in an unlawful manner, and without due caution and circumspection; as when a workman flings down a stone or piece of timber into the street, and kills a man; this may be either misadventure, manslaughter or murder, according to the circumstances under which the act was done. If it were in a country village where few passengers are, and he call out to all people to have a care, it is misadventure only; but if it were in London, or other populous town, where people are continually passing, it is manslaughter, though he gives loud warning (*b*); and murder, if he knows of their passing, and yet gives no warning at all,—for then it is malice against all mankind (*c*). And in general, when an involuntary killing happens in consequence of an unlawful act: it will be either murder or manslaughter according to the nature of the act which occasioned it. If it be in prosecution of a felonious intent, or in its consequences naturally tending to bloodshed, it will be murder; but if no more was intended than a mere civil trespass, it will amount only to manslaughter (*d*).]

Next, as to the *punishment* of this degree of homicide. The crime of manslaughter amounts to felony (*e*): and

(*a*) 3 Inst. 56.

(*b*) Kel. 40.

(*c*) 3 Inst. 57.

(*d*) Foşt. 258; Hawk. P. C. b. 1, c. 31, s. 46. Homicide, however, amounts to murder, if committed in resisting an officer of justice in the lawful execution of his duty, even though there be no felonious intent. Vide post, p. 72.

(*e*) In the particular case of manslaughter by *stabbing*, though done upon sudden provocation, the offence was formerly a *capital* felony. This was by statute 1 Jac. 1, c. 8, which provided, that when one thrust or stabbed another,—the party stabbed not having then a weapon drawn, nor having then first stricken the party stabbing,—so that he died thereof within six months after, the offender should not have the benefit of clergy, though he did it not of malice aforethought. "A statute made," says Blackstone (vol. iv. p. 193), "on account of the frequent

every person convicted thereof may be sentenced, at the discretion of the court, to be kept in penal servitude for life or for a term of not less than five years: or to be imprisoned, with or without hard labour, for any term not exceeding two years: or to pay such fine as the court shall award, in addition to or without such other discretionary punishment as aforesaid (*g*).

[Secondly. We are next to consider the crime of deliberate and wilful *murder;* a word which (as denoting a crime) was antiently applied only to the secret killing of another (*h*); which the word *moërda* signifies in the Teutonic language (*i*). And it was defined "*homicidium quod nullo vidente, nullo sciente, clam perpetratur* (*k*); for which the vill wherein it was committed,—or, if that were too poor, the whole hundred,—was liable to a heavy amercement, which amercement itself was also denominated *murdrum* (*l*). This was an antient usage among the Goths in Sweden and Denmark; who supposed the neighbourhood, unless they produced the murderer, to have perpetrated or

" quarrels and stabbings with short " daggers, between the Scotch and " English at the accession of James " I." But this Act was repealed (as well as the 43 Geo. 3, c. 58, and 1 Geo. 4, c. 90, s. 2, relating to the same subject) by 9 Geo. 4, c. 31.

(*g*) 24 & 25 Vict. c. 100, s. 5; 27 & 28 Vict. c. 47. Besides the punishment of manslaughter considered as a crime, it is attended, under Lord Campbell's Act (9 & 10 Vict. c. 93), with a liability to make pecuniary satisfaction to the representatives of the deceased. It may be here also observed (and the remark applies to *all* the felonies mentioned in this chapter with the exception of murder), that by 24 & 25 Vict. c. 100, s. 71, the court may, in its discretion, add to the punishment inflicted a requisition to give security for keeping the peace.

(*h*) Dial. de Scacc. l. 1, c. 10.

(*i*) Stiern. de Jure Sueon. l. 3, c. 3. The word *murdre* in the old statutes also signified any kind of concealment or stifling. So in the statute of Exeter, 14 Edw. 1, "*Je riens ne celerai, ne sufferai estre celé, ne murdré,*" which is thus translated into Fleta, l. 1, c. 18, s. 4, "*Nullam veritatem celabo, nec celari permittam, nec murdrari.*" And the words "*pur murdre le droit,*" in the articles of that statute, are rendered in Fleta, ib. s. 8, "*pro jure alicujus murdrando.*"

(*k*) Glanv. l. 14, c. 3.

(*l*) Bract. l. 3, tr. 2, c. 15, s. 7; Stat. Marl. c. 26; Fost. 281.

[at least connived at the murder (*m*); and, (according to Bracton,) was introduced into this kingdom by King Canute, to prevent his countrymen, the Danes, from being privily murdered by the English (*n*); and was afterwards continued by William the Conqueror, for the like security to his own Normans (*o*). And therefore if, upon inquisition had, it appeared that the person found slain was an Englishman, (the presentment whereof was denominated *englescherie*,) the country seems to have been excused from this burthen (*p*). But this difference being totally abolished by statute 14 Edw. III. st. 1, c. 4, we must now, (as is observed by Staundforde,) define murder in quite another manner; without regarding whether the party slain was killed openly or secretly, or whether he was of English or foreign extraction (*q*).

Accordingly murder is thus defined by Sir Edward Coke (*r*): "When a person of sound memory and discre-" tion unlawfully killeth any reasonable creature in being, " and under the king's peace, with malice aforethought, " either express or implied" (*s*). The best way of examining the nature of this crime, will be by considering the several branches of this definition.]

First, it must be committed by a *person of sound memory and discretion;* and hence, if there be a defect of the understanding in the person charged, by reason of his infancy, lunacy or idiocy, according to the distinctions already considered, he cannot be convicted of this or any other crime (*t*).

[Next, it happens when a person, of such sound discretion, *unlawfully killeth.* The unlawfulness arises from the

(*m*) Stiern. l. 3, c. 4.
(*n*) Bracton, L. 3, tr. 2, c. 15.
(*o*) 1 Hale, P. C. 447.
(*p*) Bract. ubi sup.
(*q*) P. C. l. 1, c. 10.
(*r*) 3 Inst. 47.
(*s*) In an indictment for murder, the charge should be that "the defendant did feloniously, wilfully, " and of his malice aforethought, " kill and murder the deceased," and it is unnecessary to set forth the manner or means. (24 & 25 Vict. c. 100, s. 6.)
(*t*) Vide sup. pp. 23—30.

[killing without lawful warrant or excuse: and there must also be an actual killing, to constitute murder; and not merely an assault with intent to kill (*u*). The killing may be by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome (*x*); but if a person be indicted for one species of killing,—as by *poisoning*,—he cannot be convicted by evidence of a totally different species of death,—as by shooting with a pistol, or starving. But where they only differ in circumstances; as if a wound be alleged to be given with a sword, and it proves to have arisen from a staff, an axe, or a hatchet; this difference is immaterial (*y*). Of all species of murder the most detestable is that by poison; because it can of all others be the least prevented, either by manhood or forethought (*z*): and therefore, by the statute 22 Hen. VIII. c. 9, it was made treason; and a more grievous and lingering kind of death was inflicted for it than the common law allowed, namely, boiling to death (*a*); but this Act did not live long, being

(*u*) 1 Hale, P. C. 425. As to an attempt to murder, &c., vide post, p. 78.

(*x*) It is doubtful whether by our law, the bearing false witness against another, with intent to take away his life, is murder, though he be consequently condemned and executed. (R. *v.* Macdaniel, 1 Leach, 52; 1 East, P. C. 333; 3 Inst. 48; Fost. 131.) But, as Blackstone remarks, (vol. iv. p. 196,) the Gothic laws punished in this case both the judge, the witnesses and the prosecutor (Stiern. de Jure Goth. l. 3, c. 3), and among the Romans, the *lex Cornelia de sicariis* punished the false witness with death, as being a species of assassination (Ff. 48, 8, 1); and there is no doubt, Blackstone adds, that it is equally murder *in foro conscientiæ* as killing with a sword; though there may be reason to forbear to punish it as such, to avoid the danger of deterring witnesses from giving evidence upon capital prosecutions.

(*y*) 3 Inst. 135; 2 Hale, P. C. 185.

(*z*) 3 Inst. 48.

(*a*) This extraordinary punishment seems to have been adopted by the legislature, from the peculiar circumstances of the crime which gave rise to it; for the preamble of the statute informs us that John Roose, a cook, had been lately convicted of throwing poison into a large pot of broth prepared for the Bishop of Rochester's family, and for the poor of the parish; and the said John Roose was, by a retrospective clause of the same statute,

[repealed by 1 Edw. VI. c. 12. It is to be observed, that if a man does an act of which the probable consequence may be, and eventually is, death; such killing may be murder, although no stroke be struck by himself, and no killing may be primarily intended. As was the case of the unnatural son who exposed his rich father to the air against his will, by reason whereof he died (*b*); of the harlot who laid her child under leaves in an orchard, where a kite struck and killed it (*c*); and of the parish officers who shifted a child from parish to parish, till it died for want of care and sustenance (*d*). So, too, if a man hath a beast that is used to do mischief, and he, knowing it, *suffers* it to go abroad, and it kills a man, even this is manslaughter in the owner; but if he had purposely *turned it loose*,—though barely to frighten people and make what is called sport,—it is with us, as it was in the Jewish law (*e*), as much murder as if he had incited a bear, or a dog to worry them (*f*). If a physician or surgeon gives his patient a potion or plaister to cure him, which, contrary to expectation, kills him, this is neither murder nor manslaughter, but misadventure; but by some of the older authorities, it hath been holden, that if he be not a *regular* physician or surgeon who administers the medicine or performs the operation, it is manslaughter at the least (*g*).] Yet Sir Matthew Hale very justly questions the law of this determination (*h*); though, on the other hand, it is clear that where death is occasioned by gross want of skill or care in the medical man (whether he be regularly licensed or not), it will amount to man-

ordered to be boiled to death. Lord Coke mentions several instances of persons suffering this horrid punishment. See 3 Inst. 28.

(*b*) Hawk. P. C. b. 1, c. 31, s. 5.

(*c*) 1 Hale, P. C. 432.

(*d*) Palm. 545.

(*e*) Exod. xxi. 28, 29.

(*f*) Palmer, 431.

(*g*) Britt. c. 5; 4 Inst. 251.

(*h*) 1 Hale, P. C. 430. See also, in accordance with the opinion of Hale and Blackstone, R. *v.* Van Butchell, 3 C. & P. 629; R. *v.* Williamson, ib. 635; R. *v.* St. John Long, 4 C. & P. 398, 423; R. *v.* Spiller, 5 C. & P. 333.

slaughter (*i*). [It is settled, however, in all cases of homicide, that in order to make the killing murder, it is requisite that the party die within a year and a day after the stroke received, or cause of death administered; in the computation of which the whole day, upon which the hurt was done, shall be reckoned the first (*k*).]

Further: the person killed must be a "*reasonable creature, in being, and under the king's peace*" at the time of the killing (*l*). To kill an alien or an outlaw, (who are both under the king's peace and protection,) is therefore as much murder as to kill the most regular-born Englishman. On the other hand, it is not murder to slay an alien enemy in the heat of battle (*m*); and, again, to kill a child in its mother's womb is not murder, but falls under a different description of crime (*n*).

[Lastly, the killing must be committed *with malice aforethought*, to make it the crime of murder. This is the grand criterion which distinguishes murder from other killing: and this malice prepense, *malitia præcogitata*, is not so properly spite or malevolence to the deceased in particular, as any evil design in general: the dictate of a wicked, depraved and malignant heart (*o*); *un disposition à faire un male chose* (*p*): and it may be either *express* or *implied* in law. Express malice is when one, with a sedate, deliberate mind and formed design doth kill another; which formed design is evidenced by external circumstances, discovering that inward intention; — as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm (*q*). This takes place in the case of deliberate duelling, where both

(*i*) See R. *v.* St. John Long, 4 C. & P. 398, 423; R. *v.* Spiller, 5 C. & P. 333.

(*k*) Hawk. P. C. b. 1, c. 31, s. 9.

(*l*) 4 Bl. Com. 198. Hence if a foreigner should kill a foreigner *on the high seas or on board a foreign ship*, no offence is committed which is triable in this country. See R. *v.* Lopez, 1 Dears. & B. 525.

(*m*) 3 Inst. 50; 1 Hale, P. C. 433.

(*n*) Hale, ubi sup.; vide post, p. 83.

(*o*) Foster, 256.

(*p*) 2 Roll. Rep. 461.

(*q*) 1 Hale, P. C. 451.

[parties meet avowedly with an intent to commit homicide, —thinking it their duty as gentlemen, and claiming it as their right, to wanton with their own lives and those of their fellow-creatures; without any warrant or authority from any power either Divine or human, but in direct contradiction to the laws both of God and man: and therefore the law has justly fixed the crime and punishment of murder on them and on their seconds also (*r*). Yet it requires a great degree of passive valour to combat the dread of even undeserved contempt, arising from false notions of honour (*s*). Also, if, even upon a sudden provocation, one beats another in a cruel and unusual manner, so that he dies, though he did not intend his death, yet he is guilty of murder by express malice; that is, by an express evil design, the genuine sense of *malitia*. As when a park-keeper tied a boy that was stealing wood to a horse's tail, and dragged him along the park; when a master corrected his servant with an iron bar; and a schoolmaster stamped on his scholar's belly; so that each of the sufferers died,—these were justly held to be murders: because the correction being excessive, and such as could not proceed but from a bad heart, it was equivalent to a deliberate act of slaughter (*t*). Neither shall he be guilty of a less crime, who in consequence of such a wilful act as shows him to be an enemy to all mankind in general, causes the death of a fellow creature; as by going deliberately, and with an intent to do mischief, upon a horse used to strike (*u*); or by coolly

(*r*) Hawk. P. C. b. 1, c. 31, s. 31. See R. *v.* Murphy, 6 C. & P. 103; R. *v.* Young, ib. 645.

(*s*) 4 Bl. Com. p. 199. Blackstone adds, that "the strongest pro- "hibitions and penalties of the law "will never be entirely effectual to "eradicate this unhappy custom; "till a method be found out of com- "pelling the original aggressor to "make some other satisfaction to "the affronted party, which the "world shall esteem equally re- "putable, as that given at the hazard "of life and fortune, as well of the "party insulted, as of him who hath "given the insult."

(*t*) 1 Hale, P. C. 454, 473, 474.

(*u*) Lord Raym. 143.

[discharging a gun among a multitude of people (*x*). So if a man resolves to kill the next man he meets, and does kill him, it is murder, although he knew him not, for this is universal malice; and if two or more come together to do an unlawful act against the peace, of which the probable consequence might be bloodshed,—as to beat a man, to commit a riot, or to rob a park,—and one of them kills a man; it is murder in them all, because of the unlawful act, the *malitia præcogitata*, or evil intended beforehand (*y*).

Also, in many cases, where no malice is expressed, the law will imply it. As where a man wilfully poisons another; in such a deliberate act the law presumes malice, though no particular enmity can be proved (*z*), and if a man kills another suddenly, without any or without a considerable provocation, the law implies malice; for no person, unless of an abandoned heart, would be guilty of such an act upon a slight, or no apparent cause. No affront by words or gestures alone is a sufficient provocation, so as to excuse or extenuate such acts of violence as manifestly endanger the life of another (*a*). But if the person so provoked had unfortunately killed the other, by beating him in such a manner as showed only an intent to chastise and not to kill him; the law so far considers the provocation of contumelious behaviour, as to adjudge it only manslaughter and not murder (*b*). In like manner, if one kills an officer of justice, either civil or criminal, while resisting him in the execution of his duty, and knowing his authority or the intention with which he interposes, or if any of his assistants be killed under the like circumstances, the law will imply malice, and the killer shall be guilty of murder (*c*); though it is manslaughter only, if

(*x*) Hawk. P. C. b. 1, c. 31, s. 12.
(*y*) Ibid. s. 10.
(*z*) 1 Hale, P. C. 455.
(*a*) Hawk. P. C. b. 1, c. 31, s. 33; 1 Hale, P. C. 455, 456.
(*b*) Foster, 291.
(*c*) 1 Hale, P. C. 457; Hawk. P. C. b. 1, c. 31, s. 55; Foster, 270, 308, &c. As to killing a *private person* attempting to apprehend a felon, see 2 Hale, P. C. 84; Foster, 272, 309, 318.

[the warrant under which the officer acts be void, or be executed in an unlawful manner (*d*). So, in case of a sudden affray, if a third person interposes to part the combatants, giving them notice of his friendly intention, and either of the combatants kill him in resisting his interposition, it is murder (*e*). And if one intends to do another felony, and undesignedly kills a man, this is also murder (*f*). Thus, if one shoots at A., and misses *him*, but kills B., this is murder; because of the previous felonious intent, which the law transfers from one to the other: for the malice, as it has been sometimes expressed, *egreditur personam* (*g*). The same is the case where one lays poison for A.; and B., against whom the prisoner had no felonious intent, takes it, and it kills him; this is likewise murder (*h*). It were endless to go through all the cases of homicide which have been adjudged, either expressly or impliedly, malicious. These, therefore, may suffice for a specimen; and we may take it for a general rule that all homicide is malicious, — and, of course, amounts to murder,—unless where *justified* by the command or permission of the law; *excused* on account of accident or self-preservation in sudden quarrel; or *alleviated* into manslaughter, by being either the involuntary consequence of some act not strictly lawful, or (if voluntary) occasioned by some sudden and sufficiently violent provocation. And all these circumstances of justification, excuse, or alleviation, it is incumbent upon the prisoner to make out to the satisfaction of the court and jury: the latter of whom are to decide whether the circumstances alleged are proved to have actually existed; the former, how far they extend to mitigate or take away the guilt (*i*). For all homicide is supposed to be malicious, until the contrary appeareth upon evidence (*k*).]

(*d*) Hawk. P. C. b. 1, c. 31, ss. 57, 58; Fost. 312.

(*e*) Fost. 272.

(*f*) 1 Hale, P. C. 465.

(*g*) Fost. 262; see Reg. v. Smith, 4 Dearsley's C. C. R. 559.

(*h*) 1 Hale, P. C. 466.

(*i*) Fost. 257; Hazel's case, 1 Leach, 406; R. v. Greenacre, 8 Car. & P. 35.

(*k*) Fost. 255.

It was formerly a fundamental principle that where murder or any other crime is committed abroad, and not within the jurisdiction of the Court of Admiralty, it could not be tried or dealt with in this country; but by many statutes this principle is now broken in upon, and particularly by 24 & 25 Vict. c. 100, s. 9, which provides, as to murder and manslaughter, that where either of them shall be committed on land out of the United Kingdom, whether within the Queen's dominions or without, and whether the person killed be a subject of her Majesty or not, such offence, if committed by any subject of her Majesty, may be dealt with, tried, and punished in any place in England or Ireland in which such person shall be in custody, in the same manner in all respects as if such offence had been actually committed in that place (*m*).

With regard to the punishment of murder by the death of the criminal, the words of the Mosaical law,—over and above the general precept to Noah, that "whoso shed-"deth man's blood, by man shall his blood be shed,"—are very emphatical in prohibiting the pardon of a murderer. "Moreover ye shall take no satisfaction for the life of a "murderer, who is guilty of death, but he shall surely be "put to death; for the land cannot be cleansed of the "blood that is shed therein, but by the blood of him that "shed it" (*n*). And yet in our country this crime, enormous as it is, was in antient times allowed *the benefit of clergy* (*o*); which was a commutation of capital punishment, at one period of our law allowed to persons in holy orders, or, what was equivalent, to persons who were able to read,—and once allowed to these only; though it was afterwards extended both to clergy and laity, whether able to read or not, and was then confined, on the other hand, to capital felonies of the lighter kind. But benefit of clergy was

(*m*) See also 12 & 13 Vict. c. 96, s. 3.

(*n*) Gen. ix. 6; Numb. xxxv. 31, 32.

(*o*) 4 Bl. Com. 201.

abolished by 7 & 8 Geo. IV. c. 28; having been, by several earlier statutes, long since taken away from murderers through malice prepense, their abettors, procurors, and counsellors (*p*): and by 24 & 25 Vict. c. 100, s. 1, it is now expressly enacted, that every person convicted of murder shall suffer death as a felon (*q*). In atrocious cases, it was, at one time, usual for the court to direct the murderer, after execution, to be hung upon a gibbet in chains near the place where the crime was committed (*r*). A direction, indeed, which formed no part of the legal judgment; though, at a later period, it was provided, by 25 Geo. II. c. 37, and 9 Geo. IV. c. 31, that the judge might direct the body to be hung in chains. [This practice of hanging in chains, which was quite contrary to the express command of the Mosaical law, seems to have been borrowed from the civil law (*s*); which, besides the terror of the example, gives also another reason, viz., that it is a comfortable sight to the relations and friends of the deceased (*t*).] By 25 Geo. II. c. 37, moreover, *dissection* was required to be,—and by 9 Geo. IV. c. 31, might be,—a part of the sentence; and by the same statutes the judge was, in passing sentence, to direct the offender to be executed on the day next but one after that on which it was passed,—unless that day should happen to be Sunday, and then on the Monday following. But these severities were successively laid aside (*u*); and it was, at length, provided by 24 & 25 Vict. c. 100, s. 2, that sentence of death, on every conviction for murder, should be pronounced and carried into execution, in the same manner as for other crimes which were capital before that

(*p*) See 23 Hen. 8, c. 1; 1 Edw. 6, c. 12; 4 & 5 Ph. & M. c. 4.

(*q*) This had previously been provided in similar terms by 9 Geo. 4, c. 31, s. 3, repealed by 24 & 25 Vict. c. 95.

(*r*) 4 Bl. Com. 202.

(*s*) "The body of a malefactor "shall not remain all night upon the "tree: but thou shalt in anywise "bury him that day, that the land "be not defiled."—Deut. xxi. 23.

(*t*) Ff. 48, 19, 28, s. 15.

(*u*) See 2 & 3 Will. 4, c. 75, s. 16; and 4 & 5 Will. 4, c. 26.

Act. Indeed, within the last few years a wide-spread and growing belief that no benefit to the public at large arises from the sight of the death of a criminal, has induced the legislature now to abolish altogether executions for murder without the prison walls. And it has accordingly been enacted by the statute 31 Vict. c. 24, that the judgment of death to be executed on any prisoner *for murder* shall be carried into effect within the walls of the prison in which he shall be confined at the time of execution, in the presence of the sheriff, gaoler, chaplain, surgeons and such other officers of the prison as the sheriff requires; and of such magistrates, relatives of the prisoner, or other persons as the sheriff or visiting justices shall think proper to admit: and that the body of the offender shall, as the general rule, and subject to the discretion of a secretary of state, be buried within the prison precincts.

[By the Roman law *parricide*, or the murder of one's parents or children, was punished in a much severer manner than any other kind of homicide. After being scourged, the delinquents were sewed up in a leathern sack, with a live dog, a cock, a viper and an ape, and so cast into the sea (*x*). Solon, however, in his laws made none against parricide; apprehending it impossible that any one should be guilty of so unnatural a barbarity (*y*). And the Persians, (according to Herodotus,) entertained the same notion, when they adjudged all persons who killed their reputed parents to be bastards (*z*).] And in like manner our English laws make no particular provision with regard to this crime, so as to distinguish it in any respect from that of simple murder (*a*). Yet formerly,

(*x*) Ff. 41, 9, 9.

(*y*) Cic. pro S. Roscio, s. 25.

(*z*) Clio, c. 137.

(*a*) Blackstone (vol. iv. p. 202) seems inclined to attribute the want of any distinction with regard to parricide in our law, to the same assumption on the part of its founders as is referred to in the text, viz., that of the impossibility of the crime.

where a servant killed his master, a wife her husband,—or an ecclesiastical person, (either secular or regular,) his superior to whom he owed faith and obedience (*b*),—this was accounted a species of treason, called *parva proditio* or petit treason (*c*). From which it followed that, in the particular case also where a parricide was committed, by one who happened to stand in the relation of servant to his parent, he was guilty of petit treason, though the crime was so ranked under no other circumstances (*d*). For all these cases involved, in contemplation of law, not only murder, but murder aggravated by a species of treason; on account of the violation of private allegiance (*e*). And thus in the antient Gothic constitutions, we find the breach both of natural and civil relations, ranked in the same class with crimes against the state and the sovereign (*f*). Nor was the distinction merely nominal,—the punishment being more exemplary than in the case of simple murder: for the sentence for petit treason, in a man, was to be drawn and hanged (*g*); and, in a woman, to be drawn and burned. But the crime itself of petit treason is now abolished; it being provided by 24 & 25 Vict. c. 100, s. 8, that any killing which amounted to

(*b*) "A clergyman," (says Blackstone, vol. iv. p. 203,) "is understood "to owe canonical obedience to the "bishop who ordained him—to him "in whose diocese he is beneficed—"and also to the metropolitan of "such bishop,—and therefore to kill "any of these is petit treason," and he cites 1 Hale, P. C. 381.

(*c*) As to petit treason, see 25 Edw. 3, c. 2; 1 Hale, P. C. 380.

(*d*) Hale, ubi sup.; Bl. Com. ubi sup.

(*e*) Foster, 107, 324, 336.

(*f*) "*Omnium gravissima censetur vis facta incolis in patriam, subditis in regem, liberis in parentes, maritis in uxores* (*et vice versâ*), *servis in dominos, aut etiam ab homine in semet-ipsum.*"—Stiernh. de Jure Goth. l. 2, c. 3.

(*g*) 1 Hale, P. C. 382; 3 Inst. 211. Blackstone (ubi sup.) remarks that this punishment of burning, in the case of the woman, seems to have been handed down to us by the laws of the antient Druids; which condemned a woman (see Cæs. de Bell. Gall. l. 6, c. 19) to be burned for murdering her husband. It was, however, at one period, the usual punishment for *all* treasons committed by those of the female sex.

that offence before 9 Geo. IV. c. 31, shall now be deemed to be murder only, and no greater offence.

II. *Attempts to murder* (*h*).—Not only the crime of actual murder, but that of endeavouring to commit it, until very recently, in certain cases, amounted to a capital felony (*i*). This crime, however, is no longer punishable with death under any circumstances,—and it is now provided by 24 & 25 Vict. c. 100, s. 11, that whosoever shall administer to (*k*), or cause to be administered to or taken by, any person, any poison or other destructive thing; or shall by any means whatsoever wound or cause any grievous bodily harm to any person, with intent in any of the cases aforesaid *to commit murder* (*l*),—shall be guilty of felony, and on conviction may be sentenced to penal servitude for life, or for not less than five years (*m*); or to imprisonment for any term not exceeding two years, with or without hard labour and solitary confinement. And by sect. 14 of the same Act, that whosoever shall attempt to administer to, or attempt or cause to be administered to or to be taken by, any person, poison or other destructive thing; or who shall shoot at any person (*n*); or shall by drawing a trigger, or other manner, attempt to discharge any kind of loaded arms at any person; or shall attempt to drown, suffocate or strangle any person,—with intent, in any of the cases aforesaid, *to commit murder*, shall (whether any bodily injury be effected or not) be guilty of felony, and liable to the same punishments as just mentioned. Again, by sect. 13, whosoever shall set fire

(*h*) As to a *conspiracy* to commit murder, vide post, c. IX. As to *threatening* murder, vide post, c. X.

(*i*) Under 7 Will. 4 & 1 Vict. c. 85 (repealed by 24 & 25 Vict. c. 95), attempting to commit murder by poisoning, wounding, &c., was punishable with death.

(*k*) As to what constitutes an administration of poison, see R. *v.* Michael, 9 Car. & P. 356.

(*l*) The jury must be satisfied of the *intention to murder*. See R. *v.* Cruise, 8 Car. & P. 541.

(*m*) See 27 & 28 Vict. c. 47.

(*n*) See Reg. *v.* Smith, 25 L. J. (M. C.) 29.

to, cast away, or destroy, any ship or vessel,—and by the 12th section, whosoever by the explosion of gunpowder, or other explosive substance, shall destroy or damage any building,—with such intent, shall be liable to be similarly punished. Moreover, the same Act contains (sect. 15) a general provision making it felony (and awarding the same punishments as already mentioned) for any person to attempt to commit murder, by any means other than those above specified (*o*).

III. *Acts causing, or tending to cause, danger to life or bodily harm.*

Mayhem, (whence the modern phrase *to maim*,) is a civil injury; consisting, as we may remember, in the violently depriving another of the use of such of his members, as may render him the less able, in fighting, either to defend himself or to annoy his adversary. But it is also a heinous crime; and by the antient law of England, he that maimed any man whereby he lost any part of his body was sentenced to lose the like part, *membrum pro membro* (*p*). [But this went afterwards out of use; so that by the common law, as it for a long time stood, mayhem was only punishable by fine and imprisonment (*q*); unless, perhaps, the offence of mayhem by castration, which all our old writers held to be felony; "*et sequitur aliquando pœna capitalis, aliquando perpetuum exilium cum omnium bonorum ademptione*" (*r*). And this, although the mayhem was committed on the highest provocation (*s*).]

(*o*) By 14 & 15 Vict. c. 100, s. 9, on an indictment charging the actual commission of any felony or misdemeanor, there may be a verdict that the party accused was not guilty of the offence charged, but was guilty of an attempt to commit the same.

(*p*) 3 Inst. 118. "*Mes, si la pleynte soit faite de femme qu'avera tolle a home ses membres, en tiel case perdra la feme la une meyn per jugement, come le membre dount ele avera trespasse.*"—Brit. c. 55. Blackstone says (vol. iv. p. 206), that the law of *membrum pro membro* was in his time still in use in Sweden; and he cites Stiern. l. 3, p. 3.

(*q*) Hawk. P. C. b. 1, c. 44, s. 3.

(*r*) Br. l. 3, tr. 2, c. 23.

(*s*) Sir E. Coke (3 Inst. 62) has transcribed a record of Henry the

By different statutes, however, viz. 5 Hen. IV. c. 5, 37 Hen. VIII. c. 6, and 22 & 23 Car. II. c. 1,—called the Coventry Act (*t*),—specific provisions were, in course of time, made against the offence of maiming, cutting off, or disabling a limb or member (*u*). But these statutes also have been repealed, so far as regards the matter in question (*x*); and the provision now in force, viz. the 24 & 25 Vict. c. 100, s. 18, enacts that whosoever shall unlawfully and maliciously, by any means whatsoever, wound (*y*) or cause any grievous bodily harm to any person; or shoot at any person (*z*); or by drawing a trigger or in any other

third's time (Claus. 13 Hen. 3, m. 9), by which a gentleman of Somersetshire appears to have been indicted for dealing thus with John the monk, whom he had caught in adultery with his wife.

(*t*) This Act was occasioned by an assault on Sir John Coventry, in the street, and slitting his nose; in revenge (as was supposed) for some obnoxious words uttered by him in parliament. (4 Bl. Com. 206.)

(*u*) The Coventry Act made it a capital felony to disable with intent to maim or to disfigure. On this statute a Mr. Coke, and one Woodburn, a labourer, were indicted in 1722; Coke for hiring and abetting Woodburn, and Woodburn for the actual fact of slitting the nose of Mr. Crispe, Coke's brother-in-law. The case was somewhat singular. The murder of Crispe was intended, and he was left for dead, being terribly hacked and disfigured with a hedge-bill; but he recovered. Now the bare attempt to murder was, at common law, no felony; but to disfigure, with an intent to disfigure, is made so by this statute, on which they were therefore indicted. And Coke, who was a disgrace to the profession of the law, had the effrontery to rest his defence upon this point, that the assault was not committed with an intent to disfigure but to murder; and therefore was not within the statute. But the court held, that if a man attacks another to murder him with such an instrument as a hedge-bill, which cannot but endanger the disfiguring him; and in such an attack happens not to kill but only to disfigure him; he may be indicted on this statute: and it may be left to the jury to determine whether it were not a design to murder by disfiguring; and consequently a malicious intent to disfigure as well as to murder. Accordingly the jury found them guilty of such previous intent to disfigure, in order to effect their principal intent to murder; and they were both condemned and executed. (See State Trials, vi. 212.)

(*x*) The Coventry Act was repealed by 7 & 8 Geo. 4, c. 27.

(*y*) As to what amounts to "a wounding," see Jenning's case, 9 Car. & P. 130.

(*z*) See Smith's case, 1 Dearsley's C. C. 559. As to shooting by *smugglers*, &c., vide post, chap. XI.

manner attempt to discharge any kind of loaded arms at any person (*a*), with intent in any of the above cases *to maim, disfigure or disable, or to do some grievous bodily harm to any person,* or with intent *to resist or prevent the lawful apprehension or detaining of any person,*—shall be guilty of felony, and be liable to the same punishment as for an attempt to murder (*b*). And that even without either of such intents being proved, whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a *misdemeanor,* and liable to penal servitude for five years, or imprisonment, with or without hard labour, not exceeding two years (*c*). Moreover (by sect. 28) whosoever shall unlawfully and maliciously by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any other grievous bodily harm to any person, shall be guilty of felony and be punishable as for an attempt to murder,—with the addition of whipping, provided the offender be a male under the age of sixteen, if the court shall so direct. And the same penal consequences will attach to whomsoever shall so cause any gunpowder or explosive substance to explode, or who shall send or deliver to, or cause it or any other offensive, dangerous or noxious thing to be received or taken by any person, or who shall put or lay at any place, or cast or throw at or on, or otherwise apply to any person, any corrosive fluid or destructive or explosive substance with intent (in any of the above cases) to burn, maim, disfigure or disable any person or to

(*a*) As to what are to be deemed "loaded arms," see 24 & 25 Vict. c. 100, s. 19.

(*b*) The punishments which may be awarded for an attempt to murder, are mentioned sup. pp. 78, 79.

(*c*) Sect. 20; 27 & 28 Vict. c. 47. It may be here mentioned (and the remark applies to *all* of the indictable misdemeanors mentioned in this chapter), that the person convicted may, if the court shall think fit, either in addition to or in lieu of any other punishment, be fined and required to find sureties to keep the peace, or for good behaviour. (24 & 25 Vict. c. 100, s. 71.)

do him some grievous bodily harm, *whether any bodily injury be effected or not* (*d*). And the same punishment, except that the term of penal servitude may not exceed fourteen years, may be inflicted (by sect. 30) on whomsoever shall so place or throw in, into, upon, against or near any building, ship or vessel, any gunpowder or other explosive substance, with intent to do any bodily injury to any person, *whether any explosion take place or bodily injury be inflicted or not.* Moreover, whosoever with intent to *enable himself or any other person to commit,* or to *assist any other person in committing, any indictable offence,* shall by any means whatsoever attempt to choke, suffocate or strangle any other person, or shall, by any means calculated to choke, suffocate or strangle, attempt to render any other person insensible, unconscious or incapable of resistance; or shall unlawfully apply or administer to, or cause to be taken by, or attempt to apply or administer to, or attempt to cause to be administered to or taken by any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter or thing,—shall be guilty of felony, and be punishable as for an attempt to murder (*e*)—with the addition of *whipping* if the offender be a male under the age of sixteen, and the court shall so direct (*f*). And whosoever shall unlawfully and maliciously prevent any person on board of, or having quitted any ship or vessel in distress, wrecked or stranded, in his endeavour to save his life; or who shall so prevent or impede any person in his endeavour to save the life of any such person on board or escaping from such vessel, shall be guilty of felony, and be punishable as for an attempt to murder (*g*). And the same penalties (except that the extreme limit of the term of penal servitude is ten years instead of life) are attached to the crime of so administering or causing to be administered to any person, any poison or other destructive or noxious thing, so as

(*d*) 24 & 25 Vict. c. 100, s. 29.
(*e*) Sects. 21, 22. As to such punishment, vide sup. pp. 78, 79.
(*f*) 26 & 27 Vict. c. 44.
(*g*) 24 & 25 Vict. c. 100, s. 17.

thereby to endanger his life or inflict on him any grievous bodily harm (*h*),—and such administration, though neither life be endangered nor grievous harm in fact inflicted, yet if with intent *to injure, aggrieve or annoy* such person, is a *misdemeanor*—and made punishable with penal servitude for five years, or imprisonment, with or without hard labour, for not more than two years (*i*).

IV. *Procuring miscarriage.* — To kill a child in the mother's womb is, as formerly observed, no murder (*k*). It was at one period however made by statute a capital felony to administer a destructive thing to procure the miscarriage of a woman quick with child; and if she should not be proved to have been quick with child, it was a felony punishable with transportation (*l*). But by a later statute the nature of the offence and the degree of punishment were made no longer to turn on the fact of being *quick* with child, but in all cases penal servitude for life might be awarded (*m*). This offence is now, however, provided against by 24 & 25 Vict. c. 100, s. 58; which awards the term of penal servitude for life, or for a term not less than five years (*n*),—or imprisonment (with or without hard labour and solitary confinement) for a term not exceeding two years,—to any woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or use any instrument or other means with the like intent; or to any person who, with a similar intent, shall unlawfully administer to any woman, (whether she be with child or not,) or cause to be taken by her, any poison or other noxious thing, or use any instrument

(*h*) 24 & 25 Vict. c. 100, s. 23. If, on indictment for this felony, the jury are satisfied that the prisoner was guilty of the misdemeanor mentioned in sect. 24, they may convict accordingly (sect. 25).

(*i*) Sect. 24; 27 & 28 Vict. c. 47.

(*k*) Vide sup. p. 70.

(*l*) 40 Geo. 3, c. 58; 9 Geo. 4, c. 31, s. 13.

(*m*) See 7 Will. 4 & 1 Vict. c. 85, s. 6, repealed by 24 & 25 Vict. c. 95.

(*n*) See 27 & 28 Vict. c. 47.

or other means with intent to procure her miscarriage; and all such practices are declared to be felonies. And further, it is provided that whosoever shall supply or procure any such poison, thing, or instrument, knowing that the same is intended to be unlawfully used or employed to procure the miscarriage of any woman, whether with child or not, shall be guilty of a misdemeanor, and punishable with penal servitude for five years, or imprisonment, with or without hard labour, not exceeding two years (*o*).

V. Another offence immediately affecting the personal security of individuals, is that of the *abduction of females*. One species of this offence, vulgarly called stealing an heiress,—viz. forcibly carrying off any woman, "having substance in goods or lands, or being heir apparent to her ancestor," (the same being followed by her marriage or defilement,)—was made a capital felony by the statutes 3 Hen. VII. c. 2, and 39 Eliz. c. 9. And by statute 4 & 5 Ph. & M. c. 8, it was also made an offence to carry off any woman child, (unmarried and within the age of sixteen years,) from her father, mother, guardian or governors; and in case of her defilement or marriage, her lands were forfeited to her next of kin during the life of her seducer (*p*). But these enactments are repealed; and the existing provision on this subject is contained in 24 & 25 Vict. c. 100; the 53rd section of which enacts, that where any woman of any age shall have any interest, (whether legal or equitable, present or future, absolute, conditional or contingent,) in any real or personal estate, —or shall be an heiress presumptive, or co-heiress, or presumptive next of kin to any one having such interest,—it

(*o*) 24 & 25 Vict. c. 100, s. 59; 27 & 28 Vict. c. 47.

(*p*) As to the forfeiture of the property of the woman, in the case of a marriage between persons, either of whom is under age, by licence or banns procured by the false oath or fraud of one of the parties, vide sup. vol. II. p. 250.

shall be felony in any person who shall, from motives of lucre (*q*), take away or detain her against her will, with intent to marry or carnally know her; or who shall cause her to be married or carnally known by any other person —or who (with a like intent) shall fraudulently allure, take away or detain any such woman who shall be *under the age of twenty-one*, out of the possession and against the will of her father or mother, or other person having the lawful care or charge of her; and the offender (in any of the above cases) is punishable by penal servitude for fourteen years, or not less than five (*r*), or by imprisonment, with or without hard labour, not exceeding two years: and shall, moreover, be incapable of taking any of her estate, interest or property; which (if marriage has taken place) shall be settled in such manner as the Court of Chancery shall appoint. The same punishments are awarded to whomsoever shall *by force* take away or detain against her will a woman of *any* age, with a similar intent (*s*). And unlawfully to take or cause to be taken out of the possession and against the will of her parents or guardian, any unmarried girl under the age of sixteen, is a *misdemeanor*, punishable with imprisonment to the extent of two years, with or without hard labour—and that, though no such intent as above mentioned can be shown (*t*).

VI. [Another offence, also against the female part of the subjects of the realm, but attended with greater aggravations than that of forcible marriage, is the crime of *rape*, *raptus mulierum*, that is, the carnal knowledge of a woman forcibly and against her will (*u*). This, by the Jewish law,

(*q*) As to what is evidence of *motives of lucre*, see R. *v.* Barratt, 9 Car. & P. 387.

(*r*) See 27 & 28 Vict. c. 47.

(*s*) 24 & 25 Vict. c. 100, s. 54.

(*t*) Sect. 55. See R. *v.* Meadows, 1 Car. & Kir. 399; R. *v.* Robins, ib. 456; Manklclow's case, 1 Dearsley's C. C. R. 159; Reg. *v.* Timmins, 9 W. R. (C. C. R.) 56. It may be remarked that, when under the age of sixteen, the girl's *consent* is immaterial.

(*u*) 4 Bl. Com. 210. See The Queen *v.* Fletcher, 28 L. J. (M. C.) 85, from which case it appears that

[was punished with death, in case the damsel was betrothed to another man: and in case she was not betrothed, then a heavy fine of fifty shekels was to be paid to the damsel's father; and she was to be the wife of the ravisher all the days of his life, without that power of divorce which was in general permitted by the Mosaic law (*x*).

The civil law punishes the crime of ravishment with death and confiscation of goods; under which it includes both the offence of forcible abduction or taking away a woman from her friends, of which we last spoke, and also the present offence of forcibly dishonouring them; either of which, without the other, is in that law sufficient to constitute a capital crime (*y*). Also the stealing away a woman from her parents or guardians and debauching her, is equally penal by the emperor's edict, whether she consent or is forced; "*sive volentibus, sive nolentibus mulieribus tale facinus fuerit perpetratum.*" And this, in order to take away from women every opportunity of offending in this way, whom the Roman law supposes never to go astray without the seduction and arts of the other sex; and therefore, by restraining and making so highly penal the solicitations of the men, they meant to secure effectually the honour of the women. "*Si enim ipsi raptores metu, vel atrocitate pœnæ, ab hujusmodi facinore se temperaverint, nulli mulieri, sive volenti, sive nolenti, peccandi locus relinquetur; quia hoc ipsum* velle *mulierum, ab insidiis nequissimi hominis, qui meditatur rapinam, inducitur. Nisi etenim eam solicitaverit, nisi odiosis artibus circumvenerit, non faciet eam velle in tantum dedecus sese prodere.*" But our English law does not entertain quite such sublime ideas of the honour of either sex, as to lay the blame of a mutual fault upon one of the transgressors only; and therefore makes it a necessary ingredient, in the crime of rape, that it must be against the woman's consent.

"against her *consent*" would be the more proper definition of this crime.

(*x*) Deut. xxii. 25.

(*y*) Cod. 9, tit. 13.

[Rape was punished by the Saxon laws, (particularly those of king Athelstan,) with death (*z*); which was also agreeable to the old Gothic or Scandinavian constitution (*a*). But this was afterwards thought too hard; and in its stead another severe, but not capital, punishment, was inflicted by William the Conqueror; viz., castration and loss of eyes (*b*); which continued till after Bracton wrote, in the reign of Henry the third. But in order to prevent malicious accusations, it was then the law (*c*), that the woman should, immediately after, "*dum recens fuerit maleficium*," go to the next town; and there make discovery to some credible persons of the injury she has suffered; and, afterwards, should acquaint the high constable of the hundred, the coroners, and the sheriff, with the outrage (*d*). This seems to correspond in some degree with the laws of Scotland and Arragon, which required that complaint must be made within twenty-four hours; though afterwards the time of limitation, in England, was extended to forty days (*e*). At present there is no time of limitation fixed; for, as it is now punished by indictment at the suit of the Crown, the maxim of law takes place that *nullum tempus occurrit regi;* but the jury will rarely give credit to a stale complaint. During the former period, also, it was held for law, that the woman, by the consent of the judge and her parents, might redeem the offender from the execution of his sentence, by accepting him for her husband, —if he also was willing to agree to the exchange, but not otherwise (*f*).

In the third year of Edward the first, (by the statute

(*z*) Bracton, l. iii. c. 28.

(*a*) Stiernh. de Jure Sueon. l. iii. c. 2.

(*b*) LL. Guil. Conqu. c. 19.

(*c*) The law is so laid down by Hale, in respect of appeals of rape in his time. (1 Hale, P. C. 632.) As to *appeals* (a mode of prosecution now abolished), vide post, c. XVIII.

(*d*) Glanv. l. xiv. c. 6; Bract. ubi sup.

(*e*) See 3 Edw. 1, c. 13.

(*f*) Hawk. P. C. b. 1, c. 41, s. 7.

[Westm. 1, c. 13,) the punishment of rape was much mitigated: the offence itself of ravishing a damsel within age, that is, *twelve* years old, either with her consent or without, or of any other woman against her will, being reduced to a trespass, if not prosecuted by appeal within forty days; and subjecting the offender only to two years' imprisonment and a fine at the king's will. But this lenity being productive of the most terrible consequences, it was, in the thirteenth year of Edward the first, found necessary to make the offence of forcible rape, felony (*g*). And by statute 18 Eliz. c. 7, it was made felony without benefit of clergy.] All these enactments were afterwards repealed by 9 Geo. IV. c. 31; which however still made the offence a capital felony: but, by the provision in force at the present time, every person convicted of the felonious crime of rape shall be liable to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour (*h*).

[An infant under the age of fourteen years, is presumed by law incapable to commit a rape; and therefore cannot be found guilty of it (*i*);—for though in other felonies *malitia supplet ætatem*, as in some cases has been shown, yet as to this particular species of felony, the law supposes an imbecility of body as well as mind (*k*).

The civil law seems to suppose a prostitute, or common harlot, incapable of any injuries of this kind (*l*); not allowing any punishment for violating the chastity of her who hath indeed no chastity at all, or at least hath no regard to it. But the law of England does not judge so hardly of offenders, as to cut off all opportunity of retreat

(*g*) Stat. Westm. 2, c. 34.

(*h*) 24 & 25 Vict. c. 100, s. 48; 27 & 28 Vict. c. 47.

(*i*) See R. *v.* Jordan, 9 Car. & P. 118. The law is the same in the case of an assault with intent to commit a rape. (R. *v.* Eldershaw, 3 Car. & P. 396.)

(*k*) 1 Hale, P. C. 631; vide sup. p. 24.

(*l*) Cod. 9, 9, 22; Ff. 47, 2, 39.

[even from common strumpets, and to treat them as never capable of amendment: and therefore holds it to be felony to force even a concubine or harlot: because the woman may have forsaken that unlawful course of life (*m*); for, as Bracton well observes, "*licet meretrix fuerit antea, certe tunc meretrix non fuit, cum reclamando nequitiæ ejus consentire noluit*" (*n*).

As to the material facts requisite to be given in evidence and proved upon an indictment for rape, they are of such a nature that, though necessary to be known and settled for the conviction of the guilty and preservation of the innocent,—and therefore to be found in such criminal treatises as discourse of these matters in detail,—their discussion here would not be desirable. We shall therefore merely add upon this head, a few remarks from Sir Matthew Hale, with regard to the competency and credibility of witnesses, which may, *salvo pudore*, be considered.

And, first, the party ravished may give evidence upon oath, and is in law a competent witness; but the credibility of her testimony, and how far she is to be believed, must be left to the jury upon the circumstances of fact that occur in that testimony. For instance, if the witness be of good fame; if she presently discovered the offence and made search for the offender; if the party accused fled for it;—these and the like are concurring circumstances, which give greater probability to her evidence. But on the other side, if she be of evil fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had opportunity to complain; if the place where the fact was alleged to have been committed was where it was possible she might have been heard, and she made no outcry;—these and the like circumstances carry a strong, but not conclusive, presumption that her testimony is false or feigned.] It is to

(*m*) 1 Hale, P. C. 629; Hawk. P. C. b. 1, c. 41, s. 2.

(*n*) L. 3, c. 27.

be observed, that she is not compellable, on her examination, to answer the question whether she has not had connection with other men (*o*); but if she does answer and replies in the negative, the accused is then at liberty to call persons to contradict her (*p*). And he is also allowed, with the view of impugning her credibility, to produce proof that he had himself had connection with her before the alleged rape (*q*), or that her character for chastity or decency is notoriously bad (*r*).

[Moreover, if the rape be charged to be committed on an infant under twelve years of age, she may still be a competent witness if she hath sense and understanding to know the nature and obligations of an oath, or even to be sensible of the wickedness of telling a deliberate lie. Nay, though she hath not, it was thought by Sir M. Hale that she ought to be heard without oath, to give the court information (*s*): and others have held that what the child told her mother or other relations may be given in evidence, since the nature of the case admits frequently of no better proof. But it is now settled that no hearsay evidence can be given of the declarations of a child who hath not capacity to be sworn, nor can such child be examined in court without oath; and that, on the other hand, there is no determinate age at which the oath of a child ought either to be admitted or rejected (*t*). Yet where the evidence of children is admitted, it is much to be wished, in order to render their evidence credible, that there should be some concurrent testimony of time, place and circumstances;—in order to make out the fact, and that the conviction should not be grounded singly on the unsupported accusation of an infant under years of discretion. For in this, as in other cases, a witness may be

(*o*) R. *v.* Hodgson, R. & R. C. C. 211.

(*p*) R. *v.* Robins, 2 Mood. & R. 512; R. *v.* Barker, 3 Car. & P. 589; see Roscoe's Evidence in Criminal Cases, 6th ed. p. 810.

(*q*) R. *v.* Martin, 6 Car. & P. 562.

(*r*) Stark. Ev. 1269, 1270.

(*s*) 1 Hale, P. C. 634.

(*t*) See R. *v.* Brasier, 1 Leach, C. L. 237.

[competent, that is, may be admitted to be heard, and yet, after being heard, may prove not to be credible or such as the jury is bound to believe; for one excellence of the trial by jury is, that the jury are triers of the credit of the witnesses, as well as of the truth of the fact (*u*).

"It is true," says the learned judge just referred to, "that rape is a most detestable crime; but it must be "remembered that it is an accusation easy to be made, "and hard to be proved, but harder to be defended by "the party accused, though innocent." Sir M. Hale then relates two very extraordinary cases of malicious prosecution for this crime that had happened within his own observation, and concludes thus: "I mention these "instances that we may be the more cautious upon trials "of offences of this nature, wherein the court and jury "may with so much ease be imposed upon without great "care and vigilance; the heinousness of the offence "many times transporting the judge and jury with so "much indignation, that they are over hastily carried to "the conviction of the person accused thereof, by the "confident testimony of sometimes false and malicious "witnesses" (*x*).]

VII. Next to rape may be classed the crime of *defilement or abuse of children.* For, first, it is a felony punishable with penal servitude for life, or not less than five years, or imprisonment (with or without hard labour) for not more than two years, unlawfully and carnally to know and abuse any girl under the age of *ten years*, even though she consent (*y*): and, secondly, it is a misdemeanor punishable by penal servitude for five years or imprisonment, with or without hard labour, to the extent of two years, so to know and abuse any girl above the age

(*u*) The remarks here made are equally applicable to the case where a party is charged with the crime next mentioned, viz. that of abusing a child.

(*x*) 1 Hale, P. C. 635.

(*y*) 24 & 25 Vict. c. 100, s. 50; 27 & 28 Vict. c. 47.

of *ten* and under the age of *twelve* (*z*),—even though she consent. Moreover, punishment by imprisonment, as last mentioned, may be inflicted on any person who shall be convicted of any *attempt* to have carnal knowledge of a girl under the age of twelve—even though she consent (*a*); and also, on whomsoever shall by false pretences or representations or other fraudulent means commit the misdemeanor of procuring any female, under the age of twenty-one, to have illicit carnal connexion with any man (*b*).

VIII. [What has been observed in the case of rape,—especially with regard to the manner of proof, which ought to be the more clear in proportion as the crime is the more detestable,—may be applied to another offence, of a still deeper malignity, the infamous *crime against nature*, committed either with man or beast; a crime which ought to be strictly and impartially proved, and then as strictly and impartially punished. But it is an offence of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out; for, if false, it deserves a punishment inferior only to that of the crime itself.

We will not act so disagreeable a part as to dwell any longer upon a subject, the very mention of which is a disgrace to human nature. It will be more expedient to imitate in this respect the delicacy of our English law, which treats it as a crime not fit to be named; "*peccatum illud horribile, inter Christianos non nominandum*" (*c*). A taciturnity observed likewise by the edict of Con-

(*z*) 24 & 25 Vict. c. 100, s. 51; 27 & 28 Vict. c. 47.

(*a*) Sect. 52. As to the crime of abusing children, see R. *v.* Hughes, 1 Cox, Cr. C. 247; R. *v.* Ashbolt, 2 Cox, Cr. C. 115; R. *v.* Martin, 9 Car. & P. 213; R. *v.* Neale, 1 Car. & Kir. 391; R. *v.* Holcroft, 2 Car. & Kir. 341; R. *v.* Beale, Law Rep., 1 C. C. R. 10.

(*b*) Sect. 49.

(*c*) See in Rot. Parl. 50 Edw. 3, n. 58, a complaint that a Lombard did commit the sin "that was not to be named." (12 Rep. 37.)

[stantius and Constans; "*ubi scelus est id quod non proficit scire, jubemus insurgere leges, armari jura gladio ultore, ut exquisitis pœnis subdantur infames qui sunt, vel qui futuri sunt, rei*" (*d*).]

In our own country this offence, (being in the times of popery only subject to ecclesiastical censures,) was made felony without benefit of clergy by statute 25 Hen. VIII. c. 6, (revived and confirmed by 5 Eliz. c. 17), and until very recently remained a capital offence (*e*). It is, however, now enacted by 24 & 25 Vict. c. 100, s. 61, that every person convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be kept in penal servitude for life, or not less than ten years. And the rule of law herein is, that, if both are arrived at years of discretion, *agentes et consentientes pari pœnâ plectantur* (*f*). Moreover, (by sect. 62), whosoever shall *attempt* to commit this crime, or shall be guilty of an assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, punishable with penal servitude for ten or not less than five years, or imprisonment, with or without hard labour, not exceeding two years (*g*).

IX. [*Kidnapping and child stealing.*—The forcible stealing away of a man, woman or child from their own country, and sending them into another, was capital by the Jewish (*h*) and also by the civil law (*i*). This is un-

(*d*) Cod. 2, 9, 31.

(*e*) It was capital under 9 Geo. 4, c. 31, now repealed by 24 & 25 Vict. c. 95. Its punishment (says Blackstone, vol. iv. p. 216) "the voice of "nature and of reason, and the ex- "press law of God (Levit. xx. 13, "15), determine to be capital; of "which we have a signal instance, "long before the Jewish dispensa- "tion, by the destruction of two "cities by fire from heaven."

(*f*) 4 Bl. Com. 216; 3 Inst. 59.

(*g*) See 27 & 28 Vict. c. 47. It is to be noticed that by 22 & 23 Vict. c. 17, and 30 & 31 Vict. c. 35, provisions are made by which, in some cases, before an indictment for an indecent assault can be preferred to or found by the grand jury, security must be given for the due prosecution of the charge.

(*h*) Exod. xxi. 16.

(*i*) Ff. 48, 15, 1. In the civil

[questionably a very heinous crime, as it robs the sovereign of his subjects, banishes a man from his country, and may, in its consequences, be productive of the most cruel and disagreeable hardships; and therefore the common law of England punished it with fine and imprisonment (*k*).] But with respect to the stealing of children, our modern law is reasonably much more severe; it being provided by 24 & 25 Vict. c. 100, s. 56, that whosoever shall unlawfully, either by force or fraud, lead, take, decoy or entice away, or detain any child under the age of *fourteen* years (*l*), with intent to deprive any parent, guardian or other person, having the lawful care or charge of such child, of its possession, or with intent to steal any article on its person;—or shall, with any such intent as aforesaid, receive or harbour such child, knowing the same to have been so stolen or enticed;—shall be guilty of felony; and he is made liable to penal servitude for not more than seven or less than five years, or to be imprisoned, with or without hard labour, for any term not more than two years; and also, if a male under the age of sixteen, to be whipped, if the court shall so think fit (*m*).

X. The offence of *abandoning* young children has also been provided against by the statute last mentioned; and it is enacted, that whosoever shall unlawfully abandon or expose any child under the age of two years, in such manner that its life shall be endangered, or its health be permanently injured or be likely to be so, shall be guilty of a misdemeanor, and punishable by penal servitude for five

law the offence of spiriting away and stealing men and children was called *plagium*, and the offenders *plagiarii*. (Ff. 48, 15, 1.)

(*k*) Raym. 474; 2 Show. 221; Skin. 47; 4 Bl. Com. 219.

(*l*) In the analogous provision contained in 9 Geo. 4, c. 31, s. 21 (now repealed), the age was fixed at *ten* years. As to the abduction of *an unmarried girl under the age of sixteen*, vide sup. 85.

(*m*) See 27 & 28 Vict. c. 47. A person bonâ fide claiming a right to the possession of the child, or to be its father or mother, is not within the above provision. (See 24 & 25 Vict. c. 100, s. 56.)

years, or imprisonment, with or without hard labour, for a term not exceeding two years (*n*). And in view of the same object, viz., the better protection of infant life, it has been since enacted by the 35 & 36 Vict. c. 38, that it shall not be lawful for any person to retain or receive for hire or reward more than one infant (or, in case of twins, more than two infants) under the age of one year, for the purpose of nursing or maintaining such infants apart from their parents for a longer period than twenty-four hours, except in a house which has been *registered* under that Act. And if it shall be proved to the "local authority" under whose superintendence such houses are placed, that there has been serious neglect, or that the person registered is incapable of supplying the infants with proper food, or that the house has become unfit for the reception of infants, the house may be struck out of the register. And any offence under this Act may be prosecuted under the Summary Jurisdiction Acts.

XI. *Unlawfully endangering railway passengers.*—Whosoever shall unlawfully and maliciously put or throw on or across a railway any wood, stone or other thing; or displace any rail, sleeper or other thing, or turn any point of machinery belonging to a railway; or show, hide or remove any signal or light; or do any other thing, with intent to endanger the safety of any person travelling or being on such railway (*o*)—or shall throw against or into any railway engine or carriage any wood, stone or other thing, with intent to endanger the safety of any person being in or upon the same (*p*)—he shall, in any of the above cases, be guilty of felony: and he is liable to penal

(*n*) 24 & 25 Vict. c. 100, s. 27; 27 & 28 Vict. c. 47. See R. *v.* Cooper, 1 Den. C. C. 459; R. *v.* Hogan, 2 Den. C. C. 277; R. *v.* Gray, 26 L. J. (N. S.) M. C. 203. In cases under this section, the offender, if a male under the age of sixteen, may be sentenced to be *whipped*, in addition to the punishments mentioned in the text.

(*o*) 24 & 25 Vict. c. 100, s. 32.

(*p*) Sect. 33.

servitude for life, or not less than five years; or to be imprisoned, with or without hard labour, for any term not exceeding two years (*q*). And, moreover, whosoever by any unlawful act, or wilful omission or neglect, shall endanger or cause to be endangered, or shall aid or assist in endangering or in causing to be endangered, the safety of any person conveyed by or being on a railway, shall be guilty of a misdemeanor, and punishable by imprisonment, with or without hard labour, to the extent of two years (*r*).

XII. *Setting spring-guns or engines to destroy or injure trespassers.*—It is enacted by 24 & 25 Vict. c. 100, that whosoever shall set or place, or cause to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life, or inflict grievous bodily harm, with the intent to destroy such life or inflict such harm, upon a trespasser or other person coming in contact therewith,—shall be guilty of a misdemeanor, and be punishable with penal servitude for five years, or imprisonment, with or without hard labour, to the extent of two years (*s*).

There is, however, a proviso, that the said enactment shall not extend to gins or traps such as are usually set with the intent of destroying vermin; or to spring-guns, man-traps, or other engines, set in a dwelling-house for the protection thereof from sunset to sunrise (*t*).

XIII. The remaining offences which fall under the

(*q*) 24 & 25 Vict. c. 100, ss. 32, 33; 27 & 28 Vict. c. 47.

(*r*) 24 & 25 Vict. c. 100, s. 34. See R. *v.* Bradford, 29 L. J. (N. S.), M. C. 171.

(*s*) Sect. 31; 27 & 28 Vict. c. 47. Prior to 7 & 8 Geo. 4, c. 18, s. 1 (repealed by 24 & 25 Vict. c. 95), a man was not indictable for the mere act of placing such instruments on his premises with intent to destroy trespassers, at least if he gave sufficient notice to the public that they were so placed. (Elott *v.* Wilks, 3 B. & Ald. 312, 314.) As to the right of *action* by a person who sustains injury from an engine of this description, see Jordan *v.* Crump, 8 Mee. & W. 782; Wootton *v.* Dawkins, 2 C. B. (N. S.) 412.

(*t*) 24 & 25 Vict. c. 100, s. 31.

subject of this chapter are, *assaults*, *batteries*, and *false imprisonment*. With regard to the nature of these offences in general, we have nothing further to add to what has been already observed in the preceding book of these Commentaries; when we considered them as civil injuries, for which a satisfaction is given to the party aggrieved. But taken in a public light, as a breach of the peace, a common assault, though not occasioning any actual bodily harm, is a misdemeanor, and is made punishable with imprisonment, with or without hard labour, to the extent of one year (*u*); while if it has occasioned such harm, it is punishable by penal servitude for five years, or imprisonment to the extent of two years, with or without hard labour (*x*). But, in some cases, assaults are punished in a much severer manner and degree; that is when they are committed with any atrocious design,—as, for example, in case of an assault with intent to murder, in which case we may remember that penal servitude *for life* may be awarded (*y*).

A variety of assaults, which require to be specially dealt with, are provided against by particular enactments (*z*). Thus, amongst others (for it would be tedious to enumerate all), an assault on a magistrate, or any other person lawfully authorized, in the exercise of his duty in preserving *wreck* or goods cast on shore, is a misdemeanor punishable with penal servitude to the extent of seven years, or imprisonment to the extent of two years, at the discretion of the court. So, also, to obstruct or assault a

(*u*) 24 & 25 Vict. c. 100, s. 47. Before this provision, "hard labour" could not be inflicted for a common assault.

(*x*) Sect. 47; 27 & 28 Vict. c. 47.

(*y*) Vide sup. p. 78.

(*z*) See also the following provisions:—13 & 14 Vict. c. 101, s. 9, as to assaults on workhouse or relieving officers: 17 & 18 Vict. c. 104, s. 206, as to masters of British ships wrongfully forcing a seaman or apprentice ashore, or leaving him behind, &c.: 24 & 25 Vict. c. 100, s. 39, as to assaults with intent to obstruct the sale or free passage of grain: sect. 40, as to assaults on seamen and others, with intent to prevent them from working at their trades: 34 & 35 Vict. c. 112, s. 12, as to assaults on constables.

clergyman while in the discharge of the duties of his calling, or to assault any person with intent to commit felony, or to assault any female indecently (*a*),—are all made punishable by two years' imprisonment, with or without hard labour, though no actual bodily harm may have been occasioned (*a*).

We may observe, however, that common assaults may be, and continually are, disposed of by the justices of the peace sitting at petty sessions, in the exercise of their summary jurisdiction, and not by way of indictment; and that, when so disposed of, the punishment is of a lighter description, and consists in a fine not exceeding £5, or imprisonment (with or without hard labour) to the extent of two months (*b*); and, in certain cases, even some species of aggravated assaults may be heard and determined by the justices (*c*). But, for further information hereon, we must refer the reader to the chapter on Summary Convictions, in a subsequent part of the work.

(*a*) 24 & 25 Vict. c. 100, s. 52. As to other indecent assaults, vide sup. pp. 92, 93. As to security being sometimes required for the due prosecution of such charge, vide sup. p. 93, n. (*g*).

(*b*) Sect. 42.

(*c*) Sect. 43. In these cases the fine may be as high as £20, and the imprisonment may extend to *six* months.

CHAPTER V.

OF OFFENCES AGAINST PROPERTY.

THE next class of crimes that we propose to consider are such as affect *property;* in considering which we shall notice, first, offences against houses; and, next, offences against property in general: and under this last division we shall arrange the different offences under the heads of larceny; malicious mischief; forgery; obtaining property by false personation; and obtaining property by false pretences.

And, first, with respect to offences against houses.

I. *Arson, ab ardendo,* is the malicious and wilful burning of the house or outhouse of another man. [This is an offence of very great malignity, and much more pernicious to the public than simple theft; because of the terror and confusion which necessarily attend it; and, also, because in simple theft the thing stolen only changes its master, but still remains *in esse* for the benefit of the public: whereas, by burning, the very substance is absolutely destroyed. It is also frequently more destructive than murder itself, of which, too, it is often the cause: since murder, atrocious as it is, seldom extends beyond the felonious act designed; whereas fire too frequently involves in the common calamity, persons unknown to the incendiary, and not intended to be hurt by him, and

[friends as well as enemies. For which reason the civil law punished with death, such as maliciously set fire to houses in towns and contiguous to others; but was more merciful to such as only fired a cottage or house standing by itself (*c*).

Our English common law also distinguishes with much accuracy upon this crime; and, therefore, we will inquire, first, what is such a house as may be the subject of this offence; next, wherein the offence itself consists, or what amounts to a burning of such house; and, lastly, how the offence is punished.

Not only the bare dwelling-house, but all outhouses that are parcel thereof,—though not of necessity contiguous thereto, or under the same roof,—as barns and stables, may be the subject of arson (*d*). The offence may be committed by wilfully setting fire to one's own house, provided one's neighbour's house is thereby also burnt; but if no mischief be done but to one's own, it did not, at common law, amount to felony, though the fire was kindled with intent to burn another's (*e*). For, by the common law, no intention to commit a felony, amounts to the same crime; though it now does, in some cases, by particular statutes. However, such wilful firing one's house, *in a town*, was always a high misdemeanor, and punishable by fine, imprisonment, and perpetual sureties for the good behaviour (*f*); and if a landlord or reversioner set fire to his own house, of which another was in possession under a lease from himself, or from those whose estate he hath, it was accounted arson; for, during the lease, the house is the property of the tenant (*g*).

As to what shall be said to be a *burning* so as to amount to arson, a bare intent, or attempt to do it, by actually

(*c*) Ff. 48, 19, 28, s. 12.
(*d*) 1 Hale, P. C. 567.
(*e*) Cro. Car. 377; 1 Jon. 351.
(*f*) 1 Hale, P. C. 568; Hawk. P. C. b. 1, c. 39, s. 3, ubi sup.; 2 East, P. C. c. 21, s. 7.
(*g*) Fost. 115.

[setting fire to a house, unless it absolutely burns, does not fall within the description of *incendit et combussit;* which were words necessary, in the days of law-Latin, to all indictments of this sort (*h*); but the burning and consuming of any part is sufficient, though the fire be afterwards extinguished (*i*). Also it must be a *malicious* burning, otherwise it is only a trespass; and, therefore, no negligence or mischance amounts to it (*k*).

The *punishment* of arson was death by our antient Saxon laws (*l*); and in the reign of Edward the first this sentence was executed by a kind of *lex talionis;* for the incendiaries were burnt to death (*m*), as they were also according to the Gothic constitutions (*n*). The statute 8 Hen. VI. c. 6, made the wilful burning of houses, under some special circumstances therein mentioned, amount to the crime of high treason; but it was again reduced to an ordinary felony, by the general Acts of Edward the sixth and Queen Mary (*o*). Moreover the offence of arson was denied the benefit of clergy by statute 23 Hen. VIII. c. 1. But that statute was repealed by 1 Edw. VI. c. 12: and arson was afterwards held to be ousted of clergy, with respect to the principal offender, only by inference and deduction from the statute 4 & 5 Ph. & M. c. 4, which expressly denied the benefit to an accessory before the fact (*p*).]

The offence which we have here described is that of arson as it stood at *common law;* but the antient doctrines as to this offence (which it will be observed had reference almost exclusively to the burning of *houses*) have now lost

(*h*) R. *v.* Russell, 1 Car. & M. 541.

(*i*) Hawk. P. C. b. 1, c. 39, ss. 16, 17.

(*k*) 1 Hale, P. C. 569.

(*l*) LL. Inæ, c. 7.

(*m*) Britt. c. 9.

(*n*) Stiern. de Jure Goth. l. 3, c. 6.

(*o*) 1 Edw. 6, c. 12, and 1 Mary, c. 1, vide post, c. VI.

(*p*) 11 Rep. 35; 2 Hale, P. C. 346, 347; Fost. 336; and see 9 Geo. 1, c. 22, now repealed by 7 & 8 Geo. 4, c. 27.

much of their importance, specific enactments having been passed by the legislature in reference to almost every case of criminal firing. The existing provisions on this head are as follows.

By 24 & 25 Vict. c. 97, s. 2 (*q*), whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein, shall be guilty of felony, and is made liable to penal servitude for life, or not less than five years (*r*), or to imprisonment for not more than two years, with or without hard labour, or solitary confinement; and if the offender be a male under the age of sixteen, he may also be sentenced to be whipped (*s*). And the same punishments are attached to the felonious offence of so setting fire to any church, chapel, meeting-house, or other place of divine worship (*t*);—and, provided the intent be to injure or defraud any person, to the crime of feloniously firing a house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hopoast, barn, storehouse, granary, pens, shed, or fold; or any farm building, or building or erection used in farming land, or in carrying on any trade or manufacture, whether in possession of the offender or any other person (*u*);—and to the felonious offence of firing a station or other building belonging to a railway, port, dock, harbour, canal, or other navigation (*v*); or any building (other than those already specified) belonging to the Queen, a county,

(*q*) By 24 & 25 Vict. c. 95, the provisions with regard to this species of arson, contained in 7 Will. 4 & 1 Vict. c. 89, s. 2, are repealed. By that Act the punishment was death.

(*r*) See 27 & 28 Vict. c. 47.

(*s*) In this and all other felonies punishable under 24 & 25 Vict. c. 97, the offender may in addition to any other punishment be required to find sureties for keeping the peace; or, in default, is liable to additional imprisonment to the extent of one year. (24 & 25 Vict. c. 97, s. 73.)

(*t*) Sect. 1.

(*u*) Sect. 3. As to what is an "outhouse," see R. *v.* James, 1 Car. & Kir. 303; R. *v.* England, ibid. 533.

(*v*) Sect. 4. The previous enactment as to this, contained in 14 & 15 Vict. c. 19, s. 8, is repealed by 24 & 25 Vict. c. 95.

riding, division, city, borough, poor-law union, parish or place, or to any university, or college or hall thereof, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution (*x*).

As to other buildings not specified as above, the offence of so setting fire to them, is somewhat less penal; being a felony punishable with penal servitude to the extent of fourteen years instead of life, or else by such imprisonment as already mentioned (*y*).

It is also enacted, that it shall be felony, and punishable as last mentioned, by any overt act to *attempt* to set fire to a building, or any matter or thing in, against, or under a building, under such circumstances that if the firing were accomplished the offence would amount to felony (*z*).

With regard to arson other than that of *buildings*,—it is enacted that unlawfully and maliciously to set fire to any *stack* of corn, grain, pulse, tares, hay, straw, haulm, stubble, or of other cultivated vegetable produce, or stack of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood or bark, or steer of wood or bark, shall be equally penal as firing any of the buildings above specified (*a*): but the punishment, if by way of penal servitude, is limited to the term of *fourteen years*, in the case of so setting fire to any *crop* of hay, grass, corn, grain or pulse, or cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, wheresoever the same may be growing (*b*); and to the term of *seven years*, if the offence be *attempted* by overt act and not completed,—under such circumstances that if the

(*x*) 24 & 25 Vict. c. 95, s. 5.
(*y*) Sect. 6.
(*z*) Sects. 7, 8.
(*a*) Sect. 17. To fire a barn in a field, if filled with hay or corn, or a stack of corn, was also accounted as arson at *common law*. (3 Inst. 67; Hawk. P. C. b. 1, c. 39, s. 2.)
(*b*) Sect. 16.

firing were effected, the offender would be guilty of felony (*c*).

Finally, to fire any *coal mine* (*d*),—or *ship* or *vessel* (*e*), —is made equally penal with setting fire to one of the buildings specified in the Act. And an attempt to do so by an overt act, is also severely punished, the term of penal servitude being in that case fourteen years (*f*).

II. *Burglary*, or nocturnal housebreaking, *burgi latrocinium*, which, by our antient law, was called *hamesecken*, has always been looked upon as a very heinous offence (*g*). For it always tends to occasion a frightful alarm, and often leads by natural consequence to the crime of murder itself. [Its malignity also is strongly illustrated by considering how particular and tender a regard is paid by the law of England to the immunity of a man's house; which it styles his castle, and will never suffer to be violated with impunity: agreeing herein with the sentiments of antient Rome, as expressed in the words of Tully, "*quid enim sanctius, quid omni religione munitius, quam domus uniuscujusque civium?*" (*h*). For this reason no outward doors can, in general, be broken open to execute any civil process; though, in criminal cases, the public safety supersedes the private. Hence, also, in part arises the animadversion of the law upon eavesdroppers, nuisancers, and incendiaries; and to this principle it must be assigned, that a man may assemble people together lawfully, (at least if they do not exceed eleven,) without danger of raising a riot, rout or unlawful assembly, in order to protect and defend his house; which he is not permitted to do in any other case (*i*).

The definition of a burglar, as given us by Sir Edward

(*c*) 24 & 25 Vict. c. 97, s. 18.
(*d*) Sect. 26.
(*e*) Sects. 42, 43.
(*f*) Sect. 27.
(*g*) 4 Bl. Com. 223.
(*h*) Pro Domo, 41.
(*i*) 1 Hale, P. C. 547. As to riots, routs, and unlawful assemblies, vide post, c. VI.

[Coke, is "he that by night breaketh and entereth into a "mansion-house, with intent to commit a felony" (*j*). In which definition there are four things to be considered—the *time*, the *place*, the *manner*, and the *intent*.

The *time* must be by night, and not by day; for in the daytime there is no burglary. We have seen in the case of justifiable homicide, how much more heinous is an attack by night, rather than by day; for one who is attacked by night may kill his assailant with impunity (*k*). As to what is reckoned night and what day for this purpose,—antiently, the day was accounted to begin only at sunrising, and to end immediately upon sunset; but the better opinion afterwards was, that if there were daylight or *crepusculum* enough, begun or left, to discern a man's face withal, it was no burglary (*l*). But this did not extend to moonlight, for then many midnight burglaries would have gone unpunished; and besides the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night, when all creation is at rest.] But the doctrines of the common law on this subject are no longer of practical importance, it being provided by 24 & 25 Vict. c. 96, (by which this offence is now regulated,) that for the purposes of that Act, and in reference to the crime now under consideration, the night shall be deemed to commence at nine in the evening, and to conclude at six in the morning of the succeeding day (*m*).

[As to the *place*. It must be, according to Sir E. Coke's definition, in a *mansion-house;* and therefore to account for the reason why breaking open a church is burglary, as it undoubtedly is, he quaintly observes, that it is *domus mansionalis Dei* (*n*). But it does not seem

(*j*) 3 Inst. 63.

(*k*) Vide sup. p. 50.

(*l*) 3 Inst. 63; 1 Hale, P. C. 550; Hawk. P. C. b. 1, c. 38, s. 2.

(*m*) 24 & 25 Vict. c. 96, s. 1. The previous enactment on this subject, contained in 7 Will. 4 & 1 Vict. c. 86, s. 4, was repealed by 24 & 25 Vict. c. 95.

(*n*) 3 Inst. 64.

[absolutely necessary that it should, in all cases, be a mansion-house; for it may also be committed by breaking the gates or walls of a *town* in the night; though that perhaps Sir Edward Coke would have called, the mansion-house of the garrison or corporation. Spelman defines burglary to be "*nocturna diruptio alicujus habitaculi, vel ecclesiæ, etiam murorum portarumve civitatis aut burgi, ad feloniam aliquam perpetrandam*" (*o*). And therefore we may safely conclude that the requisite of its being *domus mansionalis*, is only in the burglary of a private house, which is the most frequent; and in which it is indispensably necessary, to form its guilt, that it must be in a mansion or dwelling-house; for no distant barn, warehouse, or the like, are under the same privileges, nor looked upon as a man's castle or defence: nor is a breaking open of houses wherein no man resides, and which therefore for the time being are not mansion-houses, attended with the same circumstances of midnight terror. A house, however, wherein a man sometimes resides, and which the owner hath only left for a short season, *animo revertendi*, is the object of burglary, though no one be in it at the time of the fact committed (*p*).] And it was formerly the rule (*q*), that if the barn, stable, or warehouse, were parcel of the mansion-house, and within the same common fence (though not under the same roof, or contiguous,) a burglary might be committed therein; for the capital house protected and privileged all its branches and appurtenances, if within the curtilage or homestall. But it is now provided, that no building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed to be a part of such dwelling-house for the purpose of burglary, unless there shall be a *communication* between such building and dwelling-house; either immediate, or by means of a covered and

(*o*) Spelm. Gloss. tit. "Burglary;" Hawk. P. C. b. 1, c. 38, s. 10.

(*p*) 1 Hale, P. C. 556; Fost. 77.

(*q*) R. *v.* Garland, 1 Leach, C. L. 171.

inclosed passage leading from one to the other (*r*). [A chamber in a college or an inn of court, where each inhabitant hath a distinct property, is to all other purposes as well as this, the mansion-house of the owner (*s*). So also is a room or lodging in any private house the mansion for the time being of the lodger, if the owner doth not himself dwell in the house, or if he and his lodger enter by different outward doors (*t*); but if the owner himself lies in the house, and hath but one outward door at which he and his lodgers enter, such lodgers seem only to be inmates; and all their apartments to be parcel of the one dwelling-house of the owner (*u*). Thus, too, the house of a corporation, inhabited in separate apartments by the officers of the body corporate, is the mansion-house of the corporation, and not of the respective officers (*x*). But if I hire a shop, parcel of another man's house, and work or trade in it, but never lie there, it is no dwelling-house, nor can burglary be committed therein; for by the lease it is severed from the rest of the house, and therefore it is not the dwelling-house of him who occupies the other part; neither can I be said to dwell therein, when I never lie there (*y*). Neither can burglary be committed in a tent or booth erected in a market or fair, though the owner may lodge therein (*z*); for the law regards thus highly nothing but permanent edifices—a house or church, the wall or gate of a town: and though it may be the choice of the owner to lodge in so fragile a tenement, yet his lodging there no more makes it burglary to break it open, than it would be to uncover a tilted waggon under the same circumstances.

As to the *manner* of committing burglary, there must

(*r*) 24 & 25 Vict. c. 96, s. 53; re-enacting 7 & 8 Geo. 4, c. 29, s. 13, which is repealed by 24 & 25 Vict. c. 95.

(*s*) 1 Hale, P. C. 556; Hawk. P. C. b. 1, c. 38, s. 13.

(*t*) See R. v. Rogers, 1 Leach, C. C. 89; R. v. Trapshaw, ibid. 427.

(*u*) Kel. 84; Hale, ubi sup.

(*x*) Fost. 38, 39; 2 East, P. C. c. 15, s. 14.

(*y*) 1 Hale, P. C. 558.

(*z*) Hawk. P. C. b. 1, c. 38, s. 17.

[be both a breaking and an entry to complete it: but they need not be both done at once (*a*); for if a hole be broken one night, and the same breakers enter the next night through the same, they are burglars (*b*). There must in general be an actual breaking,—not a mere legal *clausum fregit*, by leaping over invisible, ideal boundaries, which may constitute a civil trespass, but a substantial and forcible irruption,—as at least by breaking, or taking out the glass of, or otherwise opening, a window; picking a lock, or opening it with a key; nay, by lifting up the latch of a door, or unloosing any other fastening which the owner hath provided. But if a person leaves his doors or windows open, it is his own folly and negligence; and if a man enters therein, it is no burglary; yet if he afterwards unlocks an inner or chamber door, it is so (*c*). But to come down a chimney is held a burglarious entry, for that is so much closed as the nature of things will admit. So also to knock at a door, and upon opening it to rush in with a felonious intent; or, under pretence of taking lodgings, to fall upon the landlord and rob him; or to procure a constable to gain admittance in order to search for traitors, and then to bind the constable and rob the house: all these entries have been adjudged burglarious, though there was no actual breaking: for the law will not suffer itself to be trifled with by such evasions, especially under the cloak of legal process (*d*). And so if a servant opens and enters his master's chamber door, with a felonious design; or if any other person lodging in the same house, or in a public inn, opens and enters another's door with such evil intent; it is burglary. Nay, if the servant conspires with a robber, and lets him into the house by night, this is burglary in both (*e*); for the servant is doing an unlawful act, and the opportunity

(*a*) R. *v.* Bird, 9 Car. & P. 44; R. *v.* Smith, R. & R. C. C. 417.
(*b*) 1 Hale, P. C. 551.
(*c*) Ibid. 553.
(*d*) Hawk. P. C. b. 1, c. 38, s. 5
(*e*) Cornwall's case, Stra. 881 1 Hale, P. C. 553.

[afforded him of doing it with greater ease, rather aggravates than extenuates the guilt. As for the entry, any the least degree of it with any part of the body, or with an instrument held in the hand, is sufficient: as, to step over the threshold, to put a hand or hook in at the window to draw out goods, or a pistol to demand one's money, are all of them burglarious entries (*f*).] The entry may be before the breaking as well as after; for though there were once different opinions upon the question as to whether the breaking *out* of a house to escape, by a man who had previously entered by an open door with intent to steal, was burglary, Lord Bacon (*g*) holding the affirmative and Sir Matthew Hale (*h*) the negative, it is now enacted that whosoever shall enter the dwelling-house of another with intent to commit any felony therein, or being in such dwelling-house shall commit any felony therein, and shall in either case break out of the said dwelling-house in the night, shall be deemed guilty of burglary (*i*). But it is universally agreed that there must be both a breaking, either in fact or by implication, and also an entry,—in order to complete the burglary (*j*).

As to the *intent*. It is clear that, except where the commission of a felony in the dwelling-house is connected with the crime in a different manner, as in the instance above given, such breaking and entry must be with a felonious intent, otherwise it is only a trespass (*k*). [And it is the same whether such intention be actually carried

(*f*) 1 Hale, P. C. 555; Hawk. P. C. b. 1, c. 38, s. 7; Fost. 108. As to what entries *are* burglarious, see the following cases: R. v. Bailey, R. & R. C. C. 341; R. *v.* Russell, 1 M. C. C. R. 377; R. *v.* Davis, R. & R. C. C. 355; R. *v.* Brice, ib. 450; R. *v.* Haines, ib. 451. And as to what are *not*, see R. v. Lawrence, 4 Car. & P. 231; R. *v.* Smith, R. & M. C. C. R. 178; R. *v.* Rust, ib. 183; R. *v.* Roberts, Car. C. L. 293.

(*g*) Bac. Elem. 65; and see 2 East, P. C. c. 15, s. 6.

(*h*) 1 Hale, P. C. 554.

(*i*) 24 & 25 Vict. c. 96, s. 51. A similar enactment was formerly contained in 12 Ann. c. 7 (repealed by 7 & 8 Geo. 4, c. 27), and afterwards in 7 & 8 Geo. 4, c. 29 (repealed by 24 & 25 Vict. c. 95).

(*j*) 4 Bl. Com. 227.

(*k*) 1 Hale, P. C. 561.

[into execution, or only demonstrated by some attempt or overt act, of which the jury is to judge. And therefore such a breach and entry of a house as has been before described, by night, with intent to commit a robbery, a murder, a rape, or any other felony, is burglary whether the thing be actually perpetrated or not. Nor does it make any difference, whether the offence were felony at common law or only created so by statute,—since that statute which makes an offence felony, gives it incidentally all the properties of a felony at common law.

Thus much for the nature of burglary; which was a felony at common law, but within the benefit of clergy (*l*). The statutes, however, of 1 Edw. VI. c. 12, and 18 Eliz. c. 7, took away clergy from the principals; and that of 3 & 4 Will. & M. c. 9, from all abettors and accessories before the fact.] And though these provisions were repealed some time since (*m*), yet by a statute in force up to a recent period, viz., by 7 Will. IV. & 1 Vict. c. 86, burglariously to break and enter into any dwelling-house, and to assault with intent to murder any person being therein; or to stab, cut, wound, beat, or strike any such person; was a felony, punishable with death. But this Act also is now repealed (*n*); and under 24 & 25 Vict. c. 96, s. 52, whosoever shall be convicted of the crime of burglary, shall be liable to penal servitude for life, or any term not less than five years (*o*); or to be imprisoned for any term not more than two years; and, in the case of imprisonment, hard labour and solitary confinement may be superadded.

In connection with the crime of burglary it may be mentioned, that whosoever shall *in any way* enter a dwelling-house in the night, with intent to commit a felony, shall

(*l*) Blackstone remarks, (vol. iv. p. 227,) that by the laws of Athens, which punished no simple theft with death, burglary was a capital crime, and cites Pott. Antiq. b. i. c. 26.

(*m*) By 7 & 8 Geo. 4, c. 27. Provisions as to the punishment of burglary, were also made by 7 & 8 Geo. 4, c. 29; but these were repealed by 7 Will. 4 & 1 Vict. c. 86.

(*n*) By 24 & 25 Vict. c. 95.

(*o*) See 27 & 28 Vict. c. 47.

be guilty of felony, and punishable with penal servitude to the extent of seven years, or imprisonment as above specified (*p*). And that whosoever shall be found by night, armed with any dangerous or offensive weapon or instrument, *with intent* to break or enter any building, and to commit felony therein: or shall be found by night in the possession, without lawful excuse, of any housebreaking implement; or with his face blackened or disguised, with intent to commit any felony: or shall be found by night in any building, with intent to commit a felony therein:—shall be guilty of a *misdemeanor*, punishable with penal servitude for five years, or imprisonment (with or without hard labour) not exceeding two years (*q*): and, in case of a second conviction, or if convicted after a previous conviction for felony, he is liable either to such imprisonment, or to penal servitude to the extent of ten years (*r*).

III. *Sacrilege* and *housebreaking by day* are offences which are now regulated by 24 & 25 Vict. c. 96,—by which it is provided, that the same penal consequences as are provided by that Act with respect to *burglary* (*s*), shall attach to whomsoever shall break and enter any church, chapel, meeting-house or other place of divine worship, and commit any felony therein,—or, being in such place, shall commit any felony therein, and break out of the same (*t*). This constitutes the crime of sacrilege, and is breaking into the House of God. It is consequently more penal than to break into other buildings; for where the felony committed, is after a breaking and entry into or out

(*p*) 24 & 25 Vict. c. 96, s. 54.

(*q*) See 27 & 28 Vict. c. 47.

(*r*) Sects. 58, 59, re-enacting 14 & 15 Vict. c. 19, ss. 1 and 2. As to the construction of which, see R. *v.* Oldham, 21 L. J. (M. C.) 134; R. *v.* Bailey, 1 Dearsley's C. C. R. 249. By stat. 5 Geo. 4, c. 33, s. 4, it is also provided, that persons in possession of housebreaking implements with intent to break into a house, shall be deemed *rogues and vagabonds*, and punished accordingly.

(*s*) Vide sup. p. 110.

(*t*) 24 & 25 Vict. c. 96, ss. 50, 52.

[into execution, or only demonstrated by some attempt or overt act, of which the jury is to judge. And therefore such a breach and entry of a house as has been before described, by night, with intent to commit a robbery, a murder, a rape, or any other felony, is burglary whether the thing be actually perpetrated or not. Nor does it make any difference, whether the offence were felony at common law or only created so by statute,—since that statute which makes an offence felony, gives it incidentally all the properties of a felony at common law.

Thus much for the nature of burglary; which was a felony at common law, but within the benefit of clergy (*l*). The statutes, however, of 1 Edw. VI. c. 12, and 18 Eliz. c. 7, took away clergy from the principals; and that of 3 & 4 Will. & M. c. 9, from all abettors and accessories before the fact.] And though these provisions were repealed some time since (*m*), yet by a statute in force up to a recent period, viz., by 7 Will. IV. & 1 Vict. c. 86, burglariously to break and enter into any dwelling-house, and to assault with intent to murder any person being therein; or to stab, cut, wound, beat, or strike any such person; was a felony, punishable with death. But this Act also is now repealed (*n*); and under 24 & 25 Vict. c. 96, s. 52, whosoever shall be convicted of the crime of burglary, shall be liable to penal servitude for life, or any term not less than five years (*o*); or to be imprisoned for any term not more than two years; and, in the case of imprisonment, hard labour and solitary confinement may be superadded.

In connection with the crime of burglary it may be mentioned, that whosoever shall *in any way* enter a dwelling-house in the night, with intent to commit a felony, shall

(*l*) Blackstone remarks, (vol. iv. p. 227,) that by the laws of Athens, which punished no simple theft with death, burglary was a capital crime, and cites Pott. Antiq. b. i. c. 26.

(*m*) By 7 & 8 Geo. 4, c. 27. Provisions as to the punishment of burglary, were also made by 7 & 8 Geo. 4, c. 29; but these were repealed by 7 Will. 4 & 1 Vict. c. 86.

(*n*) By 24 & 25 Vict. c. 95.

(*o*) See 27 & 28 Vict. c. 47.

be guilty of felony, and punishable with penal servitude to the extent of seven years, or imprisonment as above specified (*p*). And that whosoever shall be found by night, armed with any dangerous or offensive weapon or instrument, *with intent* to break or enter any building, and to commit felony therein: or shall be found by night in the possession, without lawful excuse, of any housebreaking implement; or with his face blackened or disguised, with intent to commit any felony: or shall be found by night in any building, with intent to commit a felony therein:—shall be guilty of a *misdemeanor*, punishable with penal servitude for five years, or imprisonment (with or without hard labour) not exceeding two years (*q*): and, in case of a second conviction, or if convicted after a previous conviction for felony, he is liable either to such imprisonment, or to penal servitude to the extent of ten years (*r*).

III. *Sacrilege* and *housebreaking by day* are offences which are now regulated by 24 & 25 Vict. c. 96,—by which it is provided, that the same penal consequences as are provided by that Act with respect to *burglary* (*s*), shall attach to whomsoever shall break and enter any church, chapel, meeting-house or other place of divine worship, and commit any felony therein,—or, being in such place, shall commit any felony therein, and break out of the same (*t*). This constitutes the crime of sacrilege, and is breaking into the House of God. It is consequently more penal than to break into other buildings; for where the felony committed, is after a breaking and entry into or out

(*p*) 24 & 25 Vict. c. 96, s. 54.

(*q*) See 27 & 28 Vict. c. 47.

(*r*) Sects. 58, 59, re-enacting 14 & 15 Vict. c. 19, ss. 1 and 2. As to the construction of which, see R. *v.* Oldham, 21 L. J. (M. C.) 134; R. *v.* Bailey, 1 Dearsley's C. C. R. 249. By stat. 5 Geo. 4, c. 33, s. 4, it is also provided, that persons in possession of housebreaking implements with intent to break into a house, shall be deemed *rogues and vagabonds*, and punished accordingly.

(*s*) Vide sup. p. 110.

(*t*) 24 & 25 Vict. c. 96, ss. 50, 52.

of any dwelling-house, school-house, shop, warehouse or counting-house,—or into or out of any building being within the curtilage of a dwelling-house, and occupied therewith, but not being part thereof (*u*),—the extreme limit of the term of penal servitude which may be inflicted is *fourteen years*, instead of for life (*x*).

Moreover it is also a felony, and punishable either by imprisonment as in the previous cases, or by penal servitude for seven or not less than five years, to break and enter any dwelling-house, church, chapel, meeting-house or other place of divine worship, or any building within the curtilage, or any school-house, shop, warehouse or counting-house, *with intent* to commit any felony therein, although such felony shall not in fact have been effected (*y*).

Having now considered offences against houses, we proceed, in the second place, to consider offences against property in general.

I. *Larceny* (by contraction for latrociny, *latrocinium*), is the unlawful taking and carrying away of things personal, with intent to deprive the right owner of the same (*z*); and it is either simple, or accompanied with circumstances of aggravation (*a*). Let us proceed to ex-

(*u*) No building, although within the curtilage of a dwelling-house and occupied therewith, is to be deemed part thereof for any of the purposes of the 24 & 25 Vict. c. 96, unless there be a communication either immediate or by means of a covered and enclosed passage (sect. 53).

(*x*) Sects. 55, 56.

(*y*) Sect. 57; 27 & 28 Vict. c. 47. See The Queen *v.* McPherson, 26 L. J. (N. S.) M. C. 134. By 14 & 15 Vict. c. 100, s. 9, a verdict of guilty of an attempt to commit felony may be given on an indictment charging the actual commission of a felony.

(*z*) The definition of Blackstone (vol. iv. p. 229) is "the felonious "taking and carrying away of the "personal goods of another." But this leaves it to be inquired, what *kind* of taking and carrying away is considered as felonious.

(*a*) Larceny, accompanied with circumstances of aggravation, is described in the books as being *compound*, *mixed* or *complicated*, as to which, vide post, p. 128.

amine into the nature of this offence (which is otherwise termed *theft*), as laid down in this definition.

In the first place it must be an *unlawful taking*, which implies that the goods must pass from the possession of the right owner (*b*), and without his consent (*c*): and therefore where there is no change of possession, or a change of it by consent, or a change from the possession of a person without title to that of the right owner, there can be no larceny (*d*). And, as the taking must be without the consent of the owner, so, as the general rule, no delivery of the goods from the owner to the offender upon trust, can ground a larceny:—as if A. lends B. a horse, and he rides away with him (*e*). Yet if the delivery be obtained from the owner by a person having *animus furandi* at the time, and who afterwards unlawfully appropriates the goods in pursuance of that intent, it is larceny; as if, in the case above supposed, B. solicited the loan of the horse, with intent to steal him (*f*). But in such cases, the bare failure to redeliver to the owner shall not of necessity be intended to arise from a felonious design; since that may happen from a variety of other accidents. On the other hand, one who has received goods by delivery from the owner, under such circumstances as fail to divest him of the legal possession, will be guilty of larceny if he appropriates them to himself (*g*); as when a servant makes away with his master's plate (*h*), or the guest at an inn makes away with the articles of which he has the temporary use (*i*). And the principle of the common law as

(*b*) 1 Hale, P. C. 513.

(*c*) 4 Bl. Com. 230.

(*d*) But if a person has temporary title against the permanent owner, the latter may be guilty of larceny in taking them. (R. *v.* Wilkinson, R. & R. C. C. 470; 4 Bl. Com. 231.)

(*e*) Bl. Com., ubi sup.

(*f*) Major Semple's case, 2 Leach, 469, 470. See Queen *v.* Poyser, 20 L. J. (M. C.) 191.

(*g*) Reed's case, 2 Dearsley's C. C. R. 168, 257.

(*h*) Christian's Blackstone, vol. iv. p. 230 (note); 1 Hale, P. C. 506.

(*i*) Hawk. P. C. b. 1, c. 33, s. 6; 4 Bl. Com. 231.

to the necessity of the owner not consenting to the original taking, in order to support a charge of larceny, has been, in some instances, qualified by special enactments of the legislature. Thus, whoever shall steal any chattel or fixture let to be used by him in any house or lodging, shall be guilty of felony, and may be punished (if the value of what is stolen shall exceed five pounds) by penal servitude for seven years or imprisonment for two (*k*). And it has also been provided that the bailee of any chattel, money or valuable security, who shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, shall be guilty of larceny,—although he shall not break bulk or otherwise determine the bailment; which was, at common law, a condition precedent to the commission of larceny by a bailee (*l*).

[Again, there must not only be a taking but a *carrying away*. *Cepit et asportavit* was the old law Latin. But a bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient asportation.] Thus it is larceny, if a man leading another's horse out of a close, be apprehended in the fact; or if a guest, stealing goods out of an inn, has removed them from his chamber down stairs (*m*); or, if a thief, intending to steal plate, takes it out of a chest, and lays it down upon the floor, but is surprised before he can make his escape with his spoil (*n*).

[Further, the taking and carrying away must be of *personal goods*. Lands, tenements and hereditaments, either corporeal or incorporeal, cannot in their nature be

(*k*) 24 & 25 Vict. c. 96, s. 74. If the value be less than 5*l*. the punishment is *imprisonment* only, to the extent of two years. In either case, to the punishment of imprisonment, hard labour with solitary confinement and whipping (if the offender be a male under the age of sixteen) may be added.

(*l*) See 24 & 25 Vict. c. 96, s. 3, re-enacting 20 & 21 Vict. c. 54, s. 4, which is repealed by 24 & 25 Vict. c. 95. As to the punishment of larceny in general, vide post, p. 120.

(*m*) 3 Inst. 108, 109.

(*n*) As to the application of this doctrine, see White's case, 1 Dearsley's C. C. R. 203.

[taken and carried away. And of things likewise that adhere to the freehold,—as corn, grass, trees and the like,—no larceny could be committed by the rules of the common law, but the severance of them was merely a trespass; which depended on a subtlety, in the legal notions of our ancestors. For such things were parcel of the real estate: and therefore, while they continued so, could not by any possibility be the subject of theft, being absolutely fixed and immoveable. And if they were severed by violence, so as to be changed into moveables, and at the same time, by one and the same continued act, carried off by the person who severed them; they could never be said to be taken from the *proprietor* in this their newly-acquired state of mobility, (which is essential to the nature of larceny,) being never, as such, in the actual or constructive possession of any one but him who committed the trespass. He could not, in strictness, be said to have taken what at that time were the personal goods of another; since the very act of taking, was what turned them into personal goods. But if the thief severed them at *one* time, whereby the trespass was completed, and they were converted into personal chattels in the constructive possession of him on whose soil they were left or laid, and he came again at *another* time, when they were so turned into personalty, and took them away, it was larceny at the common law; and so it was, if the owner, or any one else, severed them and they were afterwards removed (*o*). So, upon nearly the same principle, the stealing of writings relating to real estate was at common law no felony, but a trespass (*p*); because they concerned the land,—or, according to our technical language, *savour of the realty*,—and are considered as part of it by the law: so that they come to the heir or devisee together with the land which they concern. Bonds, bills and notes, (which concern mere *choses in action*,) were also, at the

(*o*) 3 Inst. 109; 1 Hale, P. C. 510.

(*p*) Hale, ubi sup.; R. *v.* Westbeer, Stra. 1137.

[common law, held not to be such goods whereof larceny might be committed; being of no intrinsic value, and not importing any property in *possession* of the person from whom they are taken (*q*). By the common law, also, larceny could not be committed of treasure trove, or wreck, till seized by the Crown or him who had the franchise; for till such seizure, no one hath a determinate property therein: nor could it be committed, at the common law, of such animals in which there is no property either absolute or qualified; as of beasts that are *feræ naturæ*, and unreclaimed, such as deer, hares and conies in a forest, chase or warren; fish in an open river or pond; or wild fowls at their natural liberty (*r*). But if such animals are reclaimed or confined, and may serve for food, it is otherwise; for of deer so inclosed in a park that they may be taken at pleasure, of fish in a trunk, and of pheasants or partridges in a mew, larceny, at common law, may be committed (*s*). It is also said that if swans be lawfully marked, it is felony at common law to steal them, though at large in a public river; and that it is likewise felony to steal them, though unmarked, if in any private river or pond; otherwise it is only a trespass (*t*). But of all valuable domestic animals, as horses and other beasts of draught; and of all animals *domitæ naturæ*, which serve for food, as cattle, swine, poultry and the like; and of their fruit or produce taken from them while living, as milk or wool (*u*),—larceny may be committed at common law; as it may also of the flesh of such as are either *domitæ* or *feræ naturæ*, when killed (*x*). While, on the other hand, as to those animals which do not serve for food, and which therefore the law holds to

(*q*) 8 Rep. 33 b. See Reg. *v.* Watts, 1 Dearsley's C. C. R. 326.

(*r*) 1 Hale, P. C. 511; Fost. 366.

(*s*) Hawk, P. C. b. 1, c. 33, s. 25; Hale, ubi sup. As to *pigeons*, see Queen *v.* Cheafor, 21 L. J. (M. C.) 43.

(*t*) Dalt. Just. c. 158.

(*u*) Dalt. 21; Crompt. 36; Hawk. P. C. b. 1, c. 33, s. 28; Hale, ubi sup.; The King *v.* Martin, (by all the judges,) P. 17 Geo. 3.

(*x*) Hale, ubi sup.

[have no intrinsic value,—as dogs of all sorts, and other creatures kept for whim and pleasure,—though a man may have a bare property therein, and maintain a civil action for the loss of them (*y*); yet they are not of such estimation as that the crime of stealing them amounts to the common law offence of larceny (*z*).

Lastly, the carrying away must be *with intent to deprive the right owner* of that which is taken; or, as it is frequently expressed, the carrying away must be *animo furandi* (*a*). This requisite, besides excusing those who labour under incapacities of mind or will, of whom we spoke sufficiently at the entrance of this Book, indemnifies also mere trespassers and other petty offenders (*b*). As if a servant takes his master's horse without his knowledge, and brings him home again,—if a neighbour takes another's plough that is left in the field, and uses it upon his own land, and then returns it,—if, under colour of being owner of rent where none is due, I distrain another's cattle or seize them,—all these are trespasses, but no felonies (*c*). The ordinary discovery of a felonious intent, is where the party doth it clandestinely; or being charged with the fact, denies it. But this is by no means the only criterion of criminality; for in cases that may amount to larceny, the variety of circumstances is so great, and the complication thereof so mingled, that it is impossible to recount all those which may evidence a felonious intent or *animus furandi;* wherefore they must be left to the due and attentive con-

(*y*) 1 Hale, P. C. 512.

(*z*) Hale, ubi sup. It must be borne in mind, that the above observations relate only to the doctrines as to larceny, which prevailed *at common law.* But by modern statutes, the stealing of many things which were at common law not the subject of larceny, is now made highly penal, as is further explained post, p. 122.

(*a*) We may here notice a statute (31 & 32 Vict. c. 116), by which *one* of two or more beneficial owners of property or members of a partnership who shall steal or embezzle any joint property, may be tried and punished, as if he was not one of such beneficial owners or member of the copartnership.

(*b*) Vide sup. p. 21.

(*c*) 1 Hale, P. C. 509.

[sideration of the court and jury (*d*).] It may be here observed, that it was formerly held to be larceny for a servant, contrary to orders, to take his master's corn or other food even for the purpose of feeding the horses or other animals of such master, though in such cases it might have been difficult to establish any *animus furandi*. But by 26 & 27 Vict. c. 103, this species of misconduct has been expressly removed from the rank of a felony, and has been made punishable by way of pecuniary penalty after summary conviction.

[The crime of larceny may be committed as to a thing whereof the owner is *unknown*, provided it appear that there is an owner other than the taker (*e*). In like manner, as, among the Romans, the *lex Hostilia de furtis* provided that an action for theft might, in certain cases, be carried on without the intervention of the owner (*f*). An example of this may occur in the case of stealing a shroud out of a grave; which is the property of those, whoever they were, that buried the deceased: but stealing the corpse itself, though a matter of great indecency, and, if the corpse be disinterred for the purpose, an indictable misdemeanor (*g*), is said to be no felony, unless some of the grave-clothes be stolen with it (*h*).

Having thus considered the general nature of larceny, we now arrive at its punishment. Theft, by the Jewish law, was only punished with a pecuniary fine and satisfaction to the party injured (*i*). The laws of Draco, at

(*d*) As to the application of the doctrines referred to in the text, to a fraudulent sale to the owner of his own property, see R. *v.* Hall, 1 Den. C. C. 381; Manning's case, 1 Dears. C. C. R. 21; and as to property larcinously appropriated by the *finder* thereof, see R. *v.* Christopher, 28 L. J. (M. C.) 35.

(*e*) See 1 Hale, P. C. 512; 2 Hale, P. C. 290.

(*f*) Gravin. l. 8, c. 106.

(*g*) Vide post, c. XII.

(*h*) 4 Bl. Com. 235. Blackstone adds, that by the law of the Franks, a person who dug a corpse up, in order to strip it, was to be banished from society; and no one suffered to relieve his wants till the relatives of the deceased consented to his readmission; and he cites Montesq. Sp. L. b. 30, c. 29.

(*i*) Exod. xxii.

[Athens, punished it with death: but his laws were said to be written in blood; and Solon afterwards changed the penalty to a pecuniary mulct. The civil law only obliged the *fur* or common thief to restore the thing stolen and pay in addition a fine to the owner, though in some very late constitutions we find the punishment capital. In this country, our antient Saxon laws nominally punished theft with death, if above the value of twelve pence; but the criminal was permitted to redeem his life by a pecuniary ransom; as, amongst their ancestors the Germans, by a stated number of cattle (*k*).] But in the ninth year of Henry the first, this power of redemption was taken away; and all persons guilty of larceny, above the value of twelve pence, were directed to be hung (*l*). So that stealing to above this value, (which was called *grand larceny*,) became then a capital felony and continued such down to our own times, wherever (as was very frequently the case) the *benefit of clergy* was taken away by some express statute from the particular species of theft of which an offender was convicted; though if not so taken away, then, by the law relating to benefit of clergy, as latterly modified, the pains of death were in fact excused, provided it were the first offence (*m*). On the other hand, petty larceny, that is, theft *under* the value of twelve pence, was never capital, but a

(*k*) Tac. de Mor. Germ. c. 12.

(*l*) This sum (says Blackstone, vol. iv. p. 237) was the standard in the time of King Athelstan; and he observes that afterwards, in the reign of King Henry the first, one shilling was the stated value, at the Exchequer, of a pasture fed ox (Dial. de Scacc. l. 1, s. 7); and that if we should suppose this shilling to mean that *solidus legalis* mentioned by Lyndewoode (Prov. l. 3, c. 13), or the 72nd part of a pound of gold, it would be equal to 13*s.* 4*d.* of the present standard. It may be observed that the progressive reduction in the value of money, while death continued to be the sentence for theft to the same amount as before, justified the complaint of Sir H. Spelman (Gloss. 350), that while everything else living became dearer, the life of man had continually grown cheaper.

(*m*) Vide post, c. XXIII.

felony punished with imprisonment or whipping only (*p*). There is now, however, no distinction recognized by the law, between grand and petty larceny, though that between simple and aggravated larceny still remains. And by the provisions now in force the punishment for simple larceny, or of any felony made punishable like simple larceny, is (as the general rule) penal servitude for *five* years (*q*), or imprisonment not exceeding two years, with or without hard labour, solitary confinement, and (in the case of a male under sixteen years) whipping (*r*); but in case of a conviction after having been twice "summarily convicted" of any of the offences so punishable under certain Acts (*s*),—or after a conviction for an indictable misdemeanor, punishable under 24 & 25 Vict. c. 96 (*t*),—the term of penal servitude may extend to *seven* years (*u*); and in case of a conviction after a previous conviction for felony (either on indictment or by way of summary conviction), may be as long as *ten* years (*x*). In certain cases, moreover, where the larceny relates to a subject for which the policy of the law provides with more anxiety, the punishment may be even more severe. For if any person shall steal, (to the value of ten shillings,) any woollen, linen, hempen or cotton yarn, or any goods or article of silk, woollen, linen, cotton, alpaca or mohair; or any one or more of those materials mixed with each other, or mixed with any other material;—whilst laid, placed, or exposed, during any stage, process or progress of manufacture, in any building, field or other place,—

(*p*) 3 Inst. 218; Hawk. b. 1, c. 33, s. 36; 4 Bl. Com. 237.

(*q*) See 27 & 28 Vict. c. 47.

(*r*) 24 & 25 Vict. c. 96, s. 4. But in certain cases, the offence of simple larceny may be summarily disposed of before justices at petty sessions, (or before a metropolitan or stipendiary magistrate.) Vide post, chapter on Summary Convictions.

(*s*) These are 7 & 8 Geo. 4, cc. 29, 30; 10 & 11 Vict. c. 82; 24 & 25 Vict. c. 97.

(*t*) 24 & 25 Vict. c. 96, s. 8.

(*u*) Sect. 9.

(*x*) Sect. 7.

the term of penal servitude which may at the discretion of the court be given instead of mere imprisonment, is extended to *fourteen* years (*y*). So, also, whosoever shall steal a horse, mare, gelding, colt or filly; a bull, cow, ox, heifer or calf; or a ram, ewe, sheep or lamb; is punishable by penal servitude to the extent of *fourteen*, or not less than five years, or by imprisonment, with or without hard labour and solitary confinement, to the extent of two years (*z*).

[The additional severity sanctioned in these instances, is owing to the difficulty there would otherwise be in preserving goods so easily carried off (*a*). Upon which principle the Roman law punished more severely than other thieves the *abigei*, or stealers of cattle (*b*); and the *balnearii*, or such as stole the clothes of persons who were washing in the public baths (*c*): both which constitutions seem to be borrowed from the laws of Athens (*d*). And so, too, the antient Goths punished, with unrelenting severity, thefts of cattle or corn that was reaped and left on the field; such kind of property, which no human industry can sufficiently guard, being esteemed under the peculiar custody of Heaven (*e*).]

The offence which we have been hitherto considering is that of larceny *at common law*, but in connection with this offence, and proper for consideration under the same head, is the crime of *stealing things* not *the subject of*

(*y*) 24 & 25 Vict. c. 96, s. 62, re-enacting in substance 7 & 8 Geo. 4, c. 29, s. 16.

(*z*) 24 & 25 Vict. c. 96, s. 10; 27 & 28 Vict. c. 47. See also 24 & 25 Vict. c. 96, s. 11, as to wilfully killing *any* animal (the stealing whereof would have amounted to felony), *with intent to steal* the carcase, &c.; sects. 12—16, as to unlawfully carrying away, &c., *deer* kept in forests, &c.; sect. 17, as to unlawful taking of *rabbits*; sect. 23, of *pigeons;* (see Taylor *v.* Newwan, 4 Best & Smith, 89;) and sects. 24, 25, of *fish*.

(*a*) Vide sup. p. 17.

(*b*) Ff. 17, t. 4.

(*c*) Ib. t. 17.

(*d*) Pott. Antiq. b. 1, c. 26.

(*e*) Stiern. de Jure Goth. l. 3, c. 5.

larceny at common law. For in progress of time it was found necessary to extend the protection of the penal laws to many of those subjects, of which the antient law of larceny took no account: and Acts of Parliament were accordingly passed, from time to time, by which punishments were imposed for thefts committed in respect of various kinds of property so circumstanced: and though these statutes have been since repealed, the same general object has been pursued in the Act (24 & 25 Vict. c. 96), which was passed in the year 1861, to consolidate the statute law "relating to larceny and other similar offences" (*f*). By this Act (*g*) provisions are made against stealing "valuable securities,"—such as bonds, bills and the like (*h*)—and numerous other subjects of property of which the enumeration will be found in a note below (*i*); and it may be laid down in general terms, that stealing has now become an offence, liable to punishment or penalty, in regard to all moveables whatever. We may also remark, with respect to the kinds of stealing thus created by statute in supplement to the antient law of larceny, that all the common law doctrines relative to

(*f*) Some of the provisions of this Act are also pointed at the fraudulent or improper *destruction* of the subjects of property; and (in the case of animals) against the killing *with intent* to steal them.

(*g*) This statute is to a certain extent based on a previous Act, having the same general design, and nearly the same title, viz., the 7 & 8 Geo. 4, c. 29, which (so far as the united kingdom is concerned), is repealed by the 24 & 25 Vict. c. 95.

(*h*) 24 & 25 Vict. c. 96, ss. 1, 27. See R. v. Smith, 1 Dearsley's C. C. R. 561.

(*i*) See 24 & 25 Vict. c. 96, ss. 18—20, as to *dogs;* ss. 21, 22, as to *birds and animals ordinarily kept in confinement;* s. 26, as to *oysters;* s. 27, as to *valuable securities not being part of title to lands;* s. 28, as to *documents of title to lands;* s. 29, as to *wills;* s. 30, as to *records and legal documents;* s. 31, as to *fixtures;* ss. 32, 33, as to *trees;* ss. 34, 35, as to *fences;* s. 36, as to *fruit;* s. 37, as to *garden produce;* ss. 38, 39, as to *ores.* A variety of antecedent statutes, passed with the same object of supplying the defects of the antient law in this particular and noticed by Blackstone, (vol. iv p. 233, &c.,) were repealed by 7 & Geo. 4, c. 27.

larceny, which we have already had occasion to notice, are in general applicable to thefts of this description also (*k*), though they are not technically denominated *larcenies* (*l*); and that their punishment is, in many cases, identical. In several instances, however, they do not amount, like larceny at common law, to a felony, but to a misdemeanor only; and there are others of them not assignable to the class either of felony or misdemeanor; but restrained by fixed pecuniary penalties only, recoverable, in a summary way, before a justice of the peace (*m*).

We have seen that larceny may not only be simple, but combined with circumstances of aggravation; which is described in our books as mixed, compound, or complicated larceny (*n*); and this is not only, like simple larceny, felonious, but is felony of a more penal character. We will therefore now consider,

1. Larceny *in a dwelling-house.* [This species of theft, though it seems to have a higher degree of guilt than simple larceny, yet was not at all distinguished from the other at common law (*o*); unless where it was accompanied with the circumstance of breaking the house by night, and then it fell under another description, viz., that of burglary. But afterwards, by several Acts of Parliament,—the history of which is very ingeniously deduced by a learned writer, who hath shown them to have gradually arisen from our improvements in trade and opulence,—the benefit of clergy was taken, in almost every instance, from larcenies when committed in a house (*p*); so that the capital sentence, to which they were subject

(*k*) R. *v.* St. John, 7 C. & P. 324.

(*l*) See R. *v.* Gooch, 8 C. & P. 293.

(*m*) Vide post, chapter on Summary Convictions.

(*n*) 4 Bl. Com. 239; Hawk. P. C. b. 1, cc. 33, 34.

(*o*) Hawk. P. C. b. 1, c. 36.

(*p*) See Barrington on Statutes, 375, &c.

[as larcenies, took effect (*q*).] These Acts, however, are all repealed, and this crime is now regulated by 24 & 25 Vict. c. 96, ss. 60, 61 (*r*). By the first of these provisions, whosoever shall steal in any dwelling-house, any chattel, money, or valuable security to the value of *five pounds* or more, shall be liable to penal servitude for fourteen years, or not less than five years (*s*); or to be imprisoned, with or without hard labour and solitary confinement, not exceeding two years; and by the second, the same punishment is awarded to whomsoever shall steal in a dwelling-house any chattel, money or valuable security, and shall by menace or threat *put any one, being therein, in bodily fear.*

2. Larcenies *in ships, wharfs, &c.* Whosoever shall steal goods or merchandize in any vessel, barge or boat in any haven or port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river, or canal;—or who shall steal any goods or merchandize from a dock, wharf, or quay adjacent to such haven, port, river, canal, creek, or basin;—is liable to the same punishments as last mentioned (*t*). And the same punishments may also be awarded to whomsoever shall plunder or steal any part of any ship or vessel in distress, or wrecked, or stranded, or cast on shore, or any goods, merchandize, or articles of any kind to her belonging (*u*).

3. [Larceny *from the person* (*x*): which is either by *privately stealing;* or by open and violent assault, usually called *robbery.* The offence of *privately stealing from a*

(*q*) Vide sup. p. 119.

(*r*) The previous provisions on this head, contained in 7 & 8 Geo. 4, c. 29, s. 12, and 7 Will. 4 & 1 Vict. c. 86, s. 5, are repealed by 24 & 25 Vict. c. 95.

(*s*) See 27 & 28 Vict. c. 47.

(*t*) 24 & 25 Vict. c. 96, s. 63.

(*u*) Sect. 65.

(*x*) In certain cases, larceny from the person may be disposed of summarily by justices at petty sessions, (or before a metropolitan or stipendiary magistrate.) Vide post, chapter on Summary Convictions.

[*man's person*,—as by picking his pocket or the like, privily without his knowledge,—was debarred of the benefit of clergy so early as by the statute of 8 Eliz. c. 4 (*y*): a severity which seems to be owing to the ease with which such offences are committed, the difficulty of guarding against them, and the boldness with which they were practised (even in the Queen's court and presence) at the time when this statute was made: besides, that this was an infringement of property in the manual occupation or corporal possession of the owner; which was an offence even in a state of nature: and, therefore, the *saccularii*, or cut purses, were more severely punished than common thieves by the Roman and Athenian laws (*z*).] But this statute of Elizabeth is repealed by 7 & 8 Geo. IV. c. 27; and new provisions are now in force as to the punishment of this offence, of which we shall presently have occasion to speak more at large.

[Open and violent larceny from the person, or robbery, the *rapine* of the civilians, is the unlawful and forcible taking from the person of another, of goods or money to any value, by violence or putting him in fear (*a*). 1. There must be an unlawful taking, otherwise it is no robbery (*b*). On the other hand, if the thief, having once taken a purse, returns it, still it is a robbery (*c*); and so it is, whether the taking be strictly from the person of another, or in his presence only; as where a robber, by

(*y*) This, however, was only where the thing stolen was of the value of more than twelve pence, for if it was below that value, so as to reduce the offence to petit larceny (as to which vide sup. p. 120), there was no need of the benefit of clergy, —the sentence not being capital. (Hawk. P. C. b. 1, c. 35, s. 4.)

(*z*) Ff. 47, 11, 7; Pott. Antiq. l. 1, c. 26.

(*a*) Hawk. P. C. b. 1, c. 34, s. 2.

(*b*) A mere *attempt* to rob was held to be felony, so late as Henry the fourth's time; (1 Hale, P. C. 532;) but afterwards it was taken to be only a misdemeanor, until 7 Geo. 2, c. 21; which made it a felony. This statute was repealed by 4 Geo. 4, c. 54, itself repealed by 7 & 8 Geo. 4, c. 27. As to the present law with regard to assaults with intent to rob, under 24 & 25 Vict. c. 96, s. 40, et seq., vide post, p. 127.

(*c*) R. *v.* Peat, 1 Leach, C. C. 228.

[menaces and violence, puts a man in fear, and drives away his sheep or his cattle before his face (*d*). But if the taking be not either directly from his person or in his presence, it is no robbery (*e*). 2. It is immaterial of what value the thing is: a penny as well as a pound, thus forcibly extorted, makes the robbery (*f*). 3. Lastly, the taking must be by force, or a previous putting in fear, which makes the violation of the person more atrocious than privately stealing. For, according to the maxim of the civil law, *qui vi rapuit, fur improbior esse videtur* (*g*). This previous violence or putting in fear, is the criterion that distinguishes robbery from other larcenies. For if one privately steals a chattel from the person of another, and afterwards keeps it by putting him in fear, this is no robbery, for the fear is subsequent (*h*). Not that it is indeed necessary to lay in the indictment, that the robbery was committed by *putting in fear;* it is sufficient if laid to be done by *violence* (*i*). And when it is laid to be done by putting in fear, this does not imply any great degree of terror or affright in the party robbed: it is enough that so much force or threatening, by word or gesture, be used as might create an apprehension of danger; or induce a man to part with his property without or against his consent (*k*). Thus, if a man be knocked down without previous warning, and stripped of his property while senseless, though strictly he cannot be said to be *put in fear*, yet this is undoubtedly a robbery. Or, if a person with a sword drawn begs an alms, and I give it him through mistrust and apprehension of violence; this also falls within the definition of the same crime (*l*). So if, under a pretence of sale, a man forcibly extorts money from another, neither shall this subterfuge avail him.

(*d*) 1 Hale, P. C. 533.
(*e*) Comyns, 478; R. v. Francis, Str. 1015.
(*f*) Hawk. P. C. b. 1, c. 34, s. 16.
(*g*) Ff. 47, 2, 4, xxii.
(*h*) 1 Hale, P. C. 534.
(*i*) Trin. T. 3 Ann. so held by all the judges.
(*k*) Fost. 128.
(*l*) Hawk. P. C. b. 1, c. 34, s. 8.

[But it is doubtful whether the forcing a higgler or other chapman to sell his wares, and giving him the full value for them, amounts to so heinous a crime as robbery (*m*). This species of larceny was debarred of the benefit of clergy by stat. 23 Hen. VIII. c. 1, and other subsequent statutes; not indeed in general, but only when committed in a dwelling-house, or in or near the king's highway. A robbery, therefore, in a distant field, was not punished with death (*n*); but was open to the benefit of clergy till the statute 3 & 4 W. & M. c. 9; which took away clergy from both principals and accessories before the fact in robbery, wheresoever committed.]

But all these statutes,—as well as the 8 Eliz. c. 4, with respect to privately stealing from the person,—were repealed by 7 & 8 Geo. IV. c. 27. And, by other enactments, new provisions have been made against both species of offences; with distinctions, as regards robbery, suitable to the aggravations with which that crime may have been committed. According to these, whosoever shall rob any person, or shall steal any chattel, money or valuable security from the person of another, shall be guilty of felony, and may be sentenced to penal servitude for fourteen years or not less than five years, or to imprisonment, with or without hard labour and solitary confinement, not exceeding two years (*o*). And if the robbery be not effected or proved, but the offender be convicted (as he may be on an indictment for robbery) of an *assault with intent to rob*, then such assault is also felony, and imprisonment to the same extent may be awarded; but, if the punishment be by way of penal servitude, the term in that case is limited to *five* years (*p*). In certain instances, however, either robbery or an assault

(*m*) Hawk. P. C. b. 1, c. 34, s. 14.

(*n*) 1 Hale, P. C. 535.

(*o*) 24 & 25 Vict. c. 96, s. 40; 27 & 28 Vict. c. 47. This and the following provisions are in substitution for others contained in 7 Will. 4 & 1 Vict. c. 87, and 14 15 Vict. c. 100, which are repealed by 24 & 25 Vict. c. 95.

(*p*) 24 & 25 Vict. c. 96, ss. 41, 42.

with that intent, is more severely punishable; for whosoever shall, being armed with an offensive weapon or instrument, rob or assault with intent to rob any person; or shall, together with one or more other person or persons, rob or so assault any person; or shall rob any person, and at the time of or immediately before or after wound, beat, strike, or use personal violence to any person,—may be sentenced to penal servitude *for life*, or not less than five years, if that species of punishment be awarded (*q*); but he may here, also, at the discretion of the court, be punished by imprisonment merely, to the extent and in the manner already particularized (*r*); and to this (by a later provision) the infliction of *whipping* may be added (*s*).

In connexion with the crime of robbery, may here be mentioned the provisions which have been framed to repress the offence of extorting money and other valuables by *threats* of various kinds. And, first, the same punishments as last mentioned are awarded to the felonious act of sending, delivering or uttering, or directly or indirectly causing to be received, knowing its contents, any letter or writing demanding of any person, with menaces and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing (*t*). And penal servitude to the extent of five years, or imprisonment as before (but not whipping), is awarded to whomsoever shall demand with menaces or by force any property, chattel, money, valuable security or valuable thing, with intent to steal the same (*u*).

Moreover penal servitude for life or five years, or im-

(*q*) See 27 & 28 Vict. c. 47.

(*r*) 24 & 25 Vict. c. 96, s. 43. The provision previously in force (7 Will. 4 & 1 Vict. c. 87, ss. 2, 3, now repealed by 24 & 25 Vict. c. 95,) made robbery, accompanied with wounding, &c., a *capital* felony.

(*s*) 26 & 27 Vict. c. 44.

(*t*) 24 & 25 Vict. c. 46, s. 44. This and the following provision are in substitution of 7 & 8 Geo. 4, c. 29, s. 8, and 7 Will. 4 & 1 Vict. c. 87, ss. 7, 12, repealed by 24 & 25 Vict. c. 95.

(*u*) 24 & 25 Vict. c. 96, s. 45; 27 & 28 Vict. c. 47.

prisonment—with or without hard labour, solitary confinement and whipping,—may be awarded to whomsoever shall commit the felonious crime of sending, delivering or uttering, or directly or indirectly causing to be received, knowing the contents, a letter or writing, accusing or threatening to accuse (*x*) any one of a crime punishable by law with death or penal servitude for not less than seven years,—or of an assault, or attempt or endeavour to commit any rape or infamous crime,—with a view or intent thereby to extort or gain any thing from any person (*y*);—and may be awarded to whomsoever shall accuse or threaten to accuse either the person to whom such accusation or threat shall be made, or any other person, of any of the above crimes, with the view or intent of such extortion or gain, either from the person accused or threatened, or from any other person (*z*);—and (with the exception of the *whipping*) may be awarded to whomsoever, with intent to defraud or injure another, shall by unlawful violence, restraint or threat to the person of another, or by accusing or threatening to accuse him of any treason, felony or infamous crime, compel or induce him to execute, make, accept, indorse, alter or destroy any valuable security, or to affix his name or the name of any other person or company, firm or co-partnership, or the seal of any corporation or society, to any paper or parchment, in order that the same may be converted into a valuable security (*a*).

4. Larceny or embezzlement *by clerks, servants, &c.* (*b*). Special provision against larcenies by servants was made

(*x*) See also 6 & 7 Vict. c. 96, s. 3, as to the offence of threatening to publish or offering to abstain from publishing a *libel* with intent to extort money, &c.

(*y*) 24 & 25 Vict. c. 96, s. 46. This section (which is in substitution for the repealed 7 & 8 Geo. 4, c. 29, s. 8) defines "the infamous crimes" to which it refers. See also as to the menaces or threats used, 24 & 25 Vict. c. 96, s. 49.

(*z*) Sect. 47, framed on 10 & 11 Vict. c. 66, s. 2, repealed by 24 & 25 Vict. c. 95.

(*a*) 24 & 25 Vict. c. 96, s. 48.

(*b*) In certain cases, larceny by clerks and servants may be disposed

by the statutes 33 Hen. VI. c. 1, and 21 Hen. VIII. c. 7; but both of these were repealed by 7 & 8 Geo. IV. c. 27. By the enactments now in force on the subject, it is provided, that whosoever, being a clerk or servant, or person employed in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security, belonging to or in the possession or power of his master, shall be guilty of felony, and liable to penal servitude for a term not exceeding fourteen years, nor less than five years (*c*); or may be imprisoned (with or without hard labour or solitary confinement) for a term not exceeding two years; and, if a male under the age of sixteen, may be whipped, if the court think fit, in addition to the imprisonment (*d*). And if larceny be committed by one employed in the public service of her Majesty, or by a constable or other person employed in the police, of any chattel, money, or valuable security, belonging to or in the possession or power of her Majesty, or intrusted to or received by the thief in virtue of his employment,—the same punishments as last mentioned (with the exception of whipping) may be awarded (*e*). In addition to which, there are separate provisions against *embezzlement;* a crime distinguished from larceny (properly so called), as being committed in respect of property which is not, at the time, in the actual or legal possession of the owner (*f*). As to this it is enacted, that whosoever, being a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security, which shall be delivered to or received,

of summarily by justices at petty sessions, or before a metropolitan or stipendiary magistrate. (Vide post, chapter on Summary Convictions.) See also 26 & 27 Vict. c. 103, as to certain cases of mis-appropriation by servants of the property of their masters.

(*c*) See 27 & 28 Vict. c. 47.

(*d*) 24 & 25 Vict. c. 96, s. 67. This is in the place of 7 & 8 Geo. 4, c. 29, s. 46, repealed by 24 & 25 Vict. c. 95.

(*e*) 24 & 25 Vict. c. 96, s. 69. See Reg. *v.* Moah, 25 L. J. (M. C.) 66.

(*f*) See R. *v.* Gill, 1 Dearsley's C. C. R. 289. As to the *indictment* for embezzlement, see 24 & 25 Vict. c. 96, s. 71.

or taken into possession by him, for or in the name or on the account of his master, shall be deemed to have feloniously stolen the same and punished accordingly (*g*): and that the same penalties shall attach if the offender be one employed in the service of her Majesty or in the police, and entrusted by virtue thereof with the receipt, custody, management or control of what has been embezzled (*h*). And where the act of embezzlement has been committed by any officer or servant of the Bank of England or Ireland, in respect of any security, money or effects lodged at the Bank, or with him as its officer or servant, the term of penal servitude may be for *life* (*i*). With respect to fraudulent appropriation by *agents* and others, not amounting in legal contemplation to larceny or felonious embezzlement, but still proper to be repressed by highly penal enactments, other provisions are made. Thus it is enacted, that any person entrusted with any money or security, as a *banker, merchant, broker, attorney,* or other *agent,* with a written direction to apply the same in a specified manner—who shall, in violation of good faith and contrary to such direction, convert the same to the use or benefit of any one other than the person by whom he was so entrusted, shall be guilty of a *misdemeanor;* and he may be sentenced to penal servitude for a term not exceeding seven years, nor less than five years, or to imprisonment not exceeding two years with or without hard labour and solitary confinement (*k*). Again, if any chattel or valuable security, or power of attorney for the sale or transfer of any share or interest in any stock or fund,—shall be entrusted to a banker, merchant, broker, attorney or other agent, either for safe custody or for any special purpose;—and he shall, in violation of good faith

(*g*) 24 & 25 Vict. c. 96, s. 68. The punishment is particularized sup. p. 130. A verdict for embezzlement may be had on an indictment, charging larceny, and *vice versâ*. (Sect. 72.)

(*h*) Sect. 70.

(*i*) Sect. 73.

(*k*) Sect. 75. See 27 & 28 Vict. c. 47.

and contrary to such purpose, sell, negotiate, transfer, pledge, or in any manner convert the same to the use or benefit of any person other than him by whom he was entrusted;—every such offender shall incur the same penalties, as are imposed in the case last before mentioned (*l*). It is provided, however, that these enactments relative to *agents* shall not affect a *trustee* or *mortgagee* in respect of an act done by him in relation to the property comprised in the trust or mortgage: nor shall it restrain a banker, merchant, broker, attorney or other agent, from receiving money due upon any valuable security, in such manner as he might otherwise have lawfully done: nor from disposing of any securities or effects in his possession, upon which he shall have a lien, claim, or demand, which entitles him to dispose thereof,—unless such disposal shall extend to more than shall be requisite for satisfying such lien, claim or demand (*m*). It is also enacted, that any banker, merchant, broker, attorney, or agent, entrusted with the *property* (*n*) of any other person for safe custody; or with any power of attorney for the sale or transfer of any property,—who shall fraudulently convert or appropriate the same to the use or benefit of any one other than the person by whom he was entrusted, shall be guilty of a misdemeanor; and be punishable in the manner and to the extent as in the misdemeanor last before mentioned (*o*). And also that any *factor* or agent entrusted with the possession of goods, or documents of title to goods, who shall without the authority of his principal,

(*l*) 24 & 25 Vict. c. 96, s. 75. See 27 & 28 Vict. c. 47.

(*m*) 24 & 25 Vict. c. 96, s. 75. This section is framed on 7 & 8 Geo. 4, c. 29, ss. 49, 50, repealed by 24 & 25 Vict. c. 95.

(*n*) The term "property" in the interpretation of 24 & 25 Vict. c. 96, includes every description of real and personal property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods. (Sect. 1.)

(*o*) Sects. 76, 77. Provisions to the same effect were contained in the Fraudulent Trustees Act (20 & 21 Vict. c. 54), now repealed by 24 & 25 Vict. c. 95.

for the use or benefit of any person other than him, and in violation of good faith, make any consignment, deposit, transfer or delivery of any such goods or documents, by way of a pledge or security for any money or valuable security borrowed by such factor or agent,—or who shall accept advances on the faith of an agreement to pledge such goods or documents, shall incur the same penalties as in the two former cases (*p*). But no factor or agent shall be liable to prosecution for consigning, depositing, transferring or delivering such goods or documents, in case the same shall not be made a security for more than the amount then justly owing to him from his principal, together with the amount of any bill drawn by or on account of the principal and accepted by the factor or agent (*q*).

In addition to all of which provisions, it is also enacted that any person offending in any of the cases following (*r*), shall be guilty of a misdemeanor, and punishable as for the misdemeanors already mentioned:—1. Any *trustee* of property for some other person, or public or charitable purpose, who shall (with intent to defraud,) convert or appropriate the same, to the use or benefit of any one other than such person, or for any purpose other than that of the trust, or who shall otherwise dispose of such property (*s*). 2. Any director, member, or public

(*p*) 24 & 25 Vict. c. 96, s. 78. This is framed on the 5 & 6 Vict. c. 39, s. 6, now repealed by 24 & 25 Vict. c. 95.

(*q*) 24 & 25 Vict. c. 96, s. 78.

(*r*) The provisions here following are framed on the 20 & 21 Vict. c. 54, repealed by 24 & 25 Vict. c. 95.

(*s*) 24 & 25 Vict. c. 96, s. 80. A "trustee" is, for the purposes of this Act, a trustee on some express trust created by some deed, will, or instrument in writing; and the term includes the heir or personal representative of such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, official manager, assignee, liquidator, or other like officer acting under any Act relating to joint stock companies, bankruptcy or insolvency. (Sect. 1.) It is to be noticed that a prosecution for the first misdemeanor above mentioned, against a *trustee*, can only be undertaken by the sanction of the attorney-general; or (in

officer of any body corporate or public company, who shall fraudulently take or apply for his own use or benefit, or for any use or purpose other than the use or purpose of such body or company, any part of the property thereof (*t*). 3. Any director, public officer, or manager of such body or company, who shall, as such, receive or possess himself of any of the property thereof (otherwise than in payment of a just debt or demand), and shall, with intent to defraud, omit to enter the same in the books and accounts (*u*): or who shall make, circulate or publish, or concur in making, circulating or publishing, any written statement or account, which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of such body or company; or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any money or property to such body or company, or to enter into any security for the benefit thereof (*x*). And 4. Any director, manager, public officer, or member of any such body or company, who shall, with intent to defraud, destroy, alter, mutilate or falsify any of its books, papers, writings, or valuable securities; or make or concur in the making of any false entry, or material omission, in any book of account or other document (*y*). There is, moreover, a provision that no criminal proceeding in respect of any of the above misdemeanors shall affect any remedy, at law or in equity, which a person aggrieved by any of them might otherwise have had (*z*); or affect any agreement or security

case that office be vacant) of the solicitor-general; and that "where any "civil proceeding shall have been "taken against any person to whom "its provisions apply, no person "who shall have taken such civil "proceeding shall commence any "prosecution under it without the "sanction of the court or judge be-"fore whom such civil proceeding "shall have been heard, or is pend-"ing." (24 & 25 Vict. c. 96, s. 80.)

(*t*) Sect. 81.

(*u*) Sect. 82.

(*x*) Sect. 84.

(*y*) Sect. 83.

(*z*) Sect. 86. But, on the other hand, no conviction shall be received in evidence against the offender, either at law or in equity.

given by a trustee, having for its object the restoration or repayment of trust property misappropriated (*a*).

5. Larcenies, &c. *in relation to the Post office.* By 7 Will. IV. & 1 Vict. c. 36, s. 25, every person employed under the Post office, who shall, contrary to his duty, open or procure or suffer to be opened, or wilfully detain or delay, or procure or suffer to be detained or delayed, a post letter, shall be guilty of a misdemeanor; and punished by fine or imprisonment, or both, as to the court shall seem meet. By other provisions, every person so employed, who shall steal, or for any purpose embezzle, secrete or destroy a post letter, shall be guilty of felony, and he is punishable with penal servitude for not more than seven nor less than five years, or with imprisonment (with or without hard labour and solitary confinement) for not more than two years (*b*): and if the letter contain any chattel, money, or valuable security, then the term of penal servitude may be *for life* (*c*). Again, every person so employed, who shall steal, or, for any purpose, embezzle, secrete or destroy, or wilfully detain or delay in the course of conveyance or delivery by post, any printed votes, or proceedings in parliament, or any printed newspaper, or other printed paper sent by the post without covers, or in covers open at the sides,—shall be guilty of a misdemeanor punishable by fine or imprisonment, or both, as to the court shall seem meet (*d*). These provisions relate only to offences by persons employed in the department of the Post office: but by other enactments, *every* person who shall steal out of a post letter any chattel or money or valuable security; or shall steal a post letter-bag; or a post letter from a post

(*a*) 24 & 25 Vict. c. 96, s. 85.

(*b*) 7 Will. 4 & 1 Vict. c. 36, s. 26; 9 & 10 Vict. c. 24, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*c*) 7 Will. 4 & 1 Vict. c. 36, ss. 25, 41, 42; 9 & 10 Vict. c. 24, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3. As to this provision see R. *v.* Rathbone, 1 Car. & M. 220; R. *v.* Mence, ib. 234; R. *v.* Young, 2 Car. & K. 466; R. *v.* Glasse, 2 Cox's Cr. C. 236; R. *v.* Reason, 1 Dearsley's Cr. C. R. 226; R. *v.* Shepherd, ibid. 606.

(*d*) 7 Will. 4 & 1 Vict. c. 36.

letter-bag, or from a post office or officer of the post, or a mail: or shall stop a mail with intent to rob or search the same; shall be guilty of felony; and he may be sentenced to the same punishments as last before specified (*e*). And every person who shall steal or unlawfully take away a post letter-bag sent by a Post office packet, or a letter out of any such bag: or shall unlawfully open any such bag;—shall be guilty of felony: and he may be sentenced to the same punishments, except that, if by way of penal servitude, the term must not exceed fourteen years (*f*). And every person who shall fraudulently retain, or wilfully secrete, or keep, or detain, or, being required by an officer of the Post office, neglect or refuse to deliver up a post letter, which ought to have been delivered to any other person; or who shall neglect or refuse to deliver up a post letter-bag, or post letter which shall have been sent and lost;—shall be guilty of a misdemeanor, and be punishable with fine and imprisonment (*g*).

Having now considered the several kinds of larcenies, whether simple or with aggravation, we must refer, under the same head, to that offence so closely connected with larceny itself, of *receiving stolen property knowing the same to have been stolen* (*h*). This offence was, at common law, a misdemeanor only; but was afterwards made

(*e*) 7 Will. 4 & 1 Vict. c. 36, ss. 27, 28, 41, 42; 9 & 10 Vict. c. 24, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3. As to this offence, see R. *v.* Harley, 1 Car. & Kir. 89.

(*f*) 7 Will. 4 & 1 Vict. c. 36, ss. 29, 41, 42; 9 & 10 Vict. c. 24, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3. See R. *v.* Jones, 2 Car. & K. 236.

(*g*) 7 Will. 4 & 1 Vict. c. 36, s. 31. By 11 & 12 Vict. c. 88, s. 4, every officer of the Post office who shall grant or issue any *money order* with a fraudulent intent, shall be guilty of felony: and he is liable, at the discretion of the court, to penal servitude for not more than seven nor less than five years, or imprisonment for any term not exceeding three years. (11 & 12 Vict. c. 88, s. 4; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.)

(*h*) As to the *indictment* for this offence, see 24 & 25 Vict. c. 96, s. 92, making it lawful, in an indictment for *stealing*, to add a count for receiving the same property, knowing it to have been stolen.

felony by several statutes not in force at the present day (*i*). It is, however, now provided by 24 & 25 Vict. c. 96, s. 91, that whosoever shall receive any chattel, money, or valuable security, or other property whatever (knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled, or disposed of), the stealing, taking, extorting, obtaining, embezzling or otherwise disposing whereof shall amount to *felony*, either by common law or by virtue of that Act, shall be guilty of felony (*k*); and may be indicted and convicted either as an accessory after the fact, or for a substantive felony, and whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and, however convicted, such receiver is liable at the discretion of the court to penal servitude for a term not exceeding fourteen years nor less than five years, or to imprisonment, (with or without hard labour and solitary confinement,) for a term not exceeding two years; and, if a male under the age of sixteen, he may also be whipped, if the court think fit, in addition to any imprisonment awarded (*l*). If, however, the thing received was such that its stealing, taking, obtaining, converting or disposal is made a *misdemeanor* by that Act, then its reception is also a misdemeanor and punishable with penal servitude to the extent of seven years, or by imprisonment, as in the case of the felonious offence (*m*). And where the stealing or taking of any property whatever is punishable by the same Act, by way of summary conviction, either

(*i*) In the time of Blackstone receivers of stolen property might be indicted as accessories after the fact and transported for fourteen years. He remarks (vol. iv. p. 38), that in France such receivers were punished with death; and that, according to the Gothic constitution, there were three sorts of thieves, "*unum qui consilium daret, alterum qui contrectaret, tertium qui receptaret et occuleret; pari pœnæ singulos obnoxios.*"—And he cites Stiern. de Jure Goth. l. 3, c. 5.

(*k*) It is immaterial that the intention with which he receives them, is for concealment and not for profit. (R. *v.* Richardson, 6 Car. & P. 335; R. *v.* Davis, ibid. 177.)

(*l*) 24 & 25 Vict. c. 96, s. 91. See 27 & 28 Vict. c. 47.

(*m*) 24 & 25 Vict. c. 96, s. 95.

for every offence, or for the first and second offences only, or for the first offence only,—the guilty receiver may also be summarily convicted; and is liable for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by the Act made liable (*n*).

Moreover, with the intention of removing, so far as possible, the temptation to this species of crime, it has been provided by the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), ss. 10, 11, that every person who occupies or keeps any lodging, beer or public-house or place of public entertainment or resort, or any brothel, who knowingly lodges or harbours therein *thieves* or *reputed* thieves, shall be liable to a penalty not exceeding 10*l.*, and in default be imprisoned for four months, with or without hard labour (*o*).

II. [*Malicious mischief* is the next species of injury to private property, which the law considers as a public crime. This is such as is done, not *animo furandi*, or with an intent of gaining by another's loss; which is some, though a weak excuse; but either out of a spirit of wanton cruelty, or of black and diabolical revenge; in which it bears a near relation to the crime of arson: for as that affects the habitation, so this does the other property of individuals.] And therefore any damage arising from this mischievous disposition, though only a trespass at com-

(*n*) 24 & 25 Vict. c. 96, s. 98. As to guilty receivers in the case of anchors, &c., see 1 & 2 Geo. 4, c. 76, s. 10; 9 & 10 Vict. c. 99, s. 29. In the case of *post letters*, &c., see 7 Will. 4 & 1 Vict. c. 36, ss. 30, 41, 42; 9 & 10 Vict. c. 24, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47. In order, as far as possible, to prevent this crime in reference to articles affording peculiar temptations, dealers in *marine stores* are placed under regulations by 17 & 18 Vict. c. 104, s. 480, and in *old metals* by 34 & 35 Vict. c. 112, s. 13. See also 27 & 28 Vict. c. 91, ss. 3, 10, 11.

(*o*) See Marshall *v.* Fox, Law Rep., 6 Q. B. 370. As to searching for stolen property, see 34 & 35 Vict. c. 112, s. 16. As to the evidence to prove guilty knowledge, ib. s. 19.

mon law, is now, by a multitude of enactments (recently consolidated into a single statute) made highly penal.

The statute here referred to is in substitution of a prior Act with a similar object (the 7 & 8 Geo. IV. c. 30); and it is the 24 & 25 Vict. c. 97, passed in the year 1861, "to consolidate and amend the statute law relating to malicious injuries to property" (*p*). And as to such injuries we may premise in general that though malice is the usual motive for this class of crimes, yet the statute contains an express enactment that its provisions shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise (*q*). Some of the provisions of this Act are noticed in other parts of the work, and they are too numerous for complete enumeration. It may be mentioned, however, that it makes provision against malicious injuries to silk, woollen, linen, cotton, hair, mohair, or alpaca goods *in the process of manufacture*, or to the machines employed therein (*r*); to machines used in other manufactures (*s*); to hop-binds (*t*); to dwelling-houses and other buildings (*u*); to trees and shrubs adjoining dwelling-houses (*x*); or else-

(*p*) The numerous statutes cited by Blackstone in reference to malicious injuries to property, are all repealed by 7 & 8 Geo. 4, c. 27.

(*q*) 24 & 25 Vict. c. 97, s. 58.

(*r*) Sect. 14; felony, extreme of penal servitude, *life*. Where the prisoner is convicted on indictment for either a *felony* or a *misdemeanor* under this Act, and the punishment inflicted is by way of *imprisonment*, it may be to the extent of two years, with or without hard labour and solitary confinement, and, if a male under sixteen, whipping.

(*s*) Sect. 15, felony, *seven years*. (See The Queen *v.* Fisher, Law Rep., 1 C. C. 7.)

(*t*) Sect. 19, felony, *fourteen years*.

(*u*) Sects. 9, 10. If by explosion of gunpowder or other explosive substance in a dwelling-house, and the life of any person be endangered, felony, *life;* if by placing such explosive substance in any building, with intent to destroy it, felony, *fourteen years*. By sect. 13, any *tenant* of a building unlawfully and maliciously pulling it or any part of it down in severing fixtures, is guilty of a *misdemeanor*.

(*x*) Sect. 20, (if injury done exceed 1*l.*,) felony, *five years*. (See 27 & 28 Vict. c. 47.)

where (*y*); to garden produce (*z*); to vegetable productions growing elsewhere (*a*); to fences (*b*); to mines (*c*), and mining engines (*d*); to sea banks and walls (*e*); to navigable rivers and canals (*f*); to ponds (*g*); to bridges and viaducts (*h*); to turnpike gates (*i*); to railway and railway carriages or engines (*k*); to electric or magnetic telegraphs (*l*); to works of art in public places (*m*); to cattle (*n*); to other animals (*o*); to ships and vessels (*p*); to buoys and sea marks (*q*); and to wrecks (*r*). And all of these injuries are made,—according to their several degrees of mischief or malignity,—either felonies or misdemeanors, or else offences such as may be disposed of, by way of summary conviction, before a justice of the peace (*s*). The Act also contains a general provision, that whosoever shall unlawfully and maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which

(*y*) 24 & 25 Vict. c. 97, s. 21, (if injury done exceed 5*l.*,) felony, *five years*. (See 27 & 28 Vict. c. 47.) If, however, the injury to the tree, &c., *wherever* growing, do not amount to 1*s.*, then a first offence is only punishable by way of summary conviction.—Sect. 22.

(*z*) Sect. 23, first offence, *summary conviction*; second offence, felony, extreme of penal servitude, *five years*. (27 & 28 Vict. c. 47.)

(*a*) Sect. 24, *summary conviction*.

(*b*) Sect. 25, *summary conviction*.

(*c*) Sect. 28, felony, *seven years*.

(*d*) Sect. 29, felony, *seven years*.

(*e*) Sect. 30, felony, *life*.

(*f*) Sect. 31, felony, *seven years*.

(*g*) Sect. 32, felony, *seven years*.

(*h*) Sect. 33, felony, *life*.

(*i*) Sect. 34, misdemeanor, *fine and imprisonment as at common law*.

(*k*) Sect. 35, felony, *life*. And see sect. 36, as to misdemeanor, by *obstructing* engines, &c., by any unlawful act, or wilful omission or neglect.

(*l*) Sects. 37, 38, misdemeanor, *imprisonment*.

(*m*) Sect. 39 (re-enacting 8 & 9 Vict. c. 44, repealed by 24 & 25 Vict. c. 95), misdemeanor, *imprisonment*.

(*n*) Sect. 40, felony, *fourteen years*.

(*o*) Sect. 41, *summary conviction*.

(*p*) Sects. 42—47, felony, *life*, *fourteen* or *seven years*, according to the nature of the injury.

(*q*) Sect. 48, felony, *seven years*.

(*r*) Sect. 49, felony, *fourteen years*.

(*s*) Vide post, chapter on Summary Convictions.

it provides no other punishment, shall be guilty of a misdemeanor, (provided the injury shall exceed the value of 5*l.*,) and be liable to imprisonment (with or without hard labour) to the extent of two years; and if the offence be committed *by night*, may be sentenced either to such imprisonment or to penal servitude to the extent of five years (*t*). And another, that such offenders as last mentioned, in cases where the damage does *not* exceed the value of 5*l.*, may be summarily convicted before a justice of the peace, and may either be committed to prison (with or without hard labour) to the extent of two months, or else shall forfeit such sum of money (not exceeding five pounds) as shall appear to the said justice a reasonable compensation for the damage committed: which sum, in the case of private property, shall be paid to the party aggrieved; but, when property of a public nature or a public right is concerned, shall be paid over to the treasurer of the county, borough or place for which the convicting justice acts (*u*). There is, however, a proviso that nothing in either of these provisions shall extend to any case where a party trespassing, acted under a fair and reasonable supposition that he had a right to do the act complained of; nor to any trespass, (not being wilful or malicious,) committed in hunting, fishing, or the pursuit of game (*x*).

III. [*Forgery* (or the *crimen falsi*) is an offence which was punished by the civil law with deportation or banishment, and sometimes with death (*y*). It may with us be defined to be, the fraudulent making or alteration of a writing, or seal, to the prejudice of another man's right; or of a stamp, to the prejudice of the revenue (*z*).] In reference to this crime, as regards writings, it has been decided, that the instrument forged must so far resemble

(*t*) 24 & 25 Vict. c. 97, s. 51. See also sect. 53.
(*u*) See 11 & 12 Vict. c. 43, s. 31.
(*x*) 24 & 25 Vict. c. 97, s. 52.
(*y*) 4 Inst. 18, 7.
(*z*) 2 East, P. C. c. xix. s. 60.

the true instrument as to be capable of deceiving persons who use ordinary observation (*a*): that any material alteration, (however slight,) is a forgery, as well as an entire fabrication (*b*): that the fraudulent application of a false signature to a true instrument, or a real signature to a false one, are consequently both forgeries (*c*): and that even if the name forged be merely a fictitious one, it is as much forgery, if done for the purpose of fraud, as if the name were that of a real person (*d*). It may also be remarked, that by 9 Geo. IV. c. 32, it was provided—even before the change of law, by which interested parties were made competent witnesses in criminal as well as civil inquiries (*e*),—that the party whose name was forged might be called as a witness to prove that the writing is not his. But on the other hand, it is an established rule, that the proof of forgery by a mere comparison of handwriting is not admissible (*f*). At common law, this offence was a misdemeanor only: but when, in the progress of society, the perpetration of it became more easy, and its tendencies more dangerous, it became necessary to assign to it a more penal character, as regards those instruments which most required protection.

An act passed in the year 1861 (24 & 25 Vict. c. 98) has consolidated and amended "the statute law relating to indictable offences by Forgery" (*g*); and, among other

(*a*) R. *v.* Collicott, R. & R. C. C. R. 212; S. C. 229.

(*b*) 2 East, P. C. c. xix. s. 4.

(*c*) 3 Chit. Crim. Law, 1088, cites 1 Hale, P. C. 683; et vide 2 East, P. C., ubi sup.

(*d*) R. *v.* Bontein, R. & R. C. C. R. 260.

(*e*) This was by 6 & 7 Vict. c. 85.

(*f*) Doe *v.* Suckermore, 5 A. & E. 703. See Taylor on Evidence, p. 1428, n. (5), 2nd edit.

(*g*) This Act, which has been supplemented by the 33 & 34 Vict. c. 58 (the Forgery Act, 1870), is in substitution of the 11 Geo. 4 & 1 Will. 4, c. 66, which, so far as it relates to our present subject, is repealed by 24 & 25 Vict. c. 95. There are also a variety of earlier statutes, containing provisions against forgery in particular cases, and especially with regard to *records and process of courts, the public funds and stocks*, the *securities of public companies* and *official documents*. As to these (many of which appear to be practically superseded by the

enactments, it provides against the felonious offence of forging the great seal of the united kingdom, the privy seal or any privy signet, the sign-manual, the seals of Scotland, or the great seal and privy seal of Ireland (*h*). It also makes it a felony to forge any stamp, exchequer bill, bank of England or other note, bill of exchange, promissory note, deed, receipt (*i*), order for the payment of money (*j*), transfer of stock, or will,—or any records or proceedings of courts, court rolls, registers of deeds, registers of births, marriages and deaths, marriage licences,—and a variety of other documents, comprising all that are in the most ordinary use in the transactions of mankind. It attaches also the same felonious character to the offence even of having in possession, without lawful excuse, (such excuse to be proved by the party accused,) any forged bank-note or the like, knowing it to be forged (*k*); or of having in possession, (without such excuse,) any frames, mould, plates, paper, &c., used in making bank-notes, or any paper with the name of any bank visible on the substance thereof (*l*).

The punishment of forging, uttering and the like at common law, or in those instances in which it was made by statute a mere misdemeanor, was fine, imprisonment and pillory; but in the cases in which it was made by statute felonious, it was at one time deemed necessary also to inflict on the offender the extreme penalty of death. Capital punishment, however,—having been previously taken away with regard to many cases

recent Act), we must refer the reader to the treatises on criminal law.

(*h*) 24 & 25 Vict. c. 98, s. 1. Antecedently to this Act, the offence of counterfeiting the Great Seal, &c. amounted to *treason*. This was formerly punishable with death; though under 11 Geo. 4 & 1 Will. 4, c. 66, it was not a *capital* offence, but punishable with transportation for life.

(*i*) See Clark *v.* Newsam, 1 Exch. 131.

(*j*) See Queen *v.* Dawson, 20 L. J. (M. C.) 102.

(*k*) 24 & 25 Vict. c. 98, s. 13, *fourteen years*.

(*l*) Sects. 14, 18, *fourteen years*.

of forgery, by 11 Geo. IV. & 1 Will. IV. c. 66, and 2 & 3 Will. IV. c. 123,—was altogether abolished, as a punishment for this offence, by 7 Will. IV. & 1 Vict. c. 84 (*m*). And now (under the 24 & 25 Vict. c. 98, above referred to) the felon convicted of any of the forgeries provided against by that Act, is liable to penal servitude for life, fourteen, seven or five years (*n*)—the extreme term which may be awarded varying according to the document forged; or else (at the discretion of the court) to imprisonment for not more than two years, with or without hard labour and solitary confinement (*o*).

The same statute of 24 & 25 Vict. c. 98, contains enactments against other practices connected with, or aiding the perpetration of, the crime of forgery: which in most cases are made felonies, and punishable with penal servitude or imprisonment. Of these our limits will not allow

(*m*) It remained a capital offence, till the Act last mentioned, to forge a will or testamentary writing, a power of attorney or other authority to transfer stock or receive dividends; and certain other instruments. (See 2 & 3 Will. 4, c. 123; 5 & 6 Will. 4, cc. 45, 51.)

(*n*) See 27 & 28 Vict. c. 47.

(*o*) By the 24 & 25 Vict. c. 98, the different forgeries under that Act are made thus punishable:—(sect. 1) forging, &c., the Seals, (extreme of sentence by way of penal servitude,) *life;* (sect. 2) stock transfers or powers of attorney, *life;* (sect. 4) attestation of stock transfers or powers of attorney, *seven years;* (sect. 5) entries in the books of the Bank of England or Ireland, *life;* (sect. 7) India bonds, *life;* (sect. 8) exchequer bills, bonds, &c., *life;* (sect. 12) bank notes, *life;* (sect. 20) deeds, *life;* (sect. 21) wills, *life;* (sect. 22) bills of exchange or promissory notes, *life;* (sect. 23) orders, receipts, &c., for money, *life*; (sect. 26) debentures, *fourteen years;* (sect. 27) records or proceedings of courts, *seven years;* (sect. 28) copies or certificates of records, &c., or process, *seven years;* (sect. 29) instruments made evidence by act of parliament, *seven years;* (sect. 30) court rolls relating to copyholds, *life;* (sect. 31) registers of deeds, *fourteen years;* (sect. 32) orders of justices of the peace, *five years*, see 27 & 28 Vict. c. 47; (sect. 33) certificates, &c., of accountant-general, &c., *fourteen years;* (sect. 35) marriage licences, *seven years;* (sects. 36, 37) registers of births, baptisms, marriages, deaths, or burials, *life*. In all of the above forgeries, however, punishment by way of imprisonment, instead of penal servitude, may be awarded at the discretion of the court to the extent of two years, and with or without hard labour and solitary confinement.

us to give a complete enumeration, but they comprise the following:—making paper, &c., in imitation of that used for exchequer bills or bonds (*p*);—purchasing forged notes, bank paper or bills (*q*);—making or engraving plates, moulds, &c., for bank-notes (*r*);—accepting bills, notes, &c., without authority, with intent to defraud (*s*);—obliterating or altering marks on cheques or drafts, signifying they are to be paid through a banker (*t*);—falsely acknowledging recognizances or bail (*u*);—destroying or making false entries in registers (*x*);—and demanding (with intent to defraud) property on any forged instruments (*y*).

It has also since the above statute, viz., by 25 & 26 Vict. c. 88, been made a *misdemeanor*, fraudulently to forge or counterfeit any *trade mark* lawfully used by any other person to denote that any chattel or thing therewith marked is of his own manufacture or merchandize, or in respect of which he has any copyright (*z*); and such offence (besides the forfeiture of the articles impressed with such forged or counterfeited marks) is made punishable by fine or imprisonment, or both. If imprisonment is awarded, it may be to the extent of two years, with or without hard labour (*a*).

Also by the Forgery Act, 1870 (33 & 34 Vict. c. 58), the forgery of stock certificates or coupons, issued by the bank of England in payment of interest of the National Debt,—or the personation of the owners of such stock,—is made felony, and punishable with penal servitude for life or not less than five years, or imprisonment to the extent of two years, with or without hard labour and solitary confinement.

(*p*) 24 & 25 Vict. c. 98, ss. 9, 10, *seven years.*

(*q*) Sect. 13, *fourteen years.*

(*r*) Sects. 14—19, *fourteen years.*

(*s*) Sect. 24, *fourteen years.*

(*t*) Sect. 25, *life.*

(*u*) Sect. 34, *seven years.*

(*x*) Sects. 36, 37, *life.*

(*y*) Sect. 38, *fourteen years.* See also 30 & 31 Vict. c. 131, s. 36, as to engraving *share warrants* or *coupons.*

(*z*) The definition of "copyright" is given in 24 & 25 Vict. c. 98, s. 1.

(*a*) 25 & 26 Vict. c. 88, s. 14.

IV. *Obtaining property by false personation* (*b*). Frauds of this description were indictable, at common law, as misdemeanors, and made punishable by fine and imprisonment (*c*); but they are now also made penal by the express provision of acts of parliament. By these statutes, to personate any soldier, in order fraudulently to receive his pay, pension, prize money, or wages, is felony; and punishable with imprisonment to the extent of two years (with or without hard labour), or by penal servitude for life or not less than five years (*d*). Again, to personate (with a fraudulent intention) any seaman or marine (*e*); or falsely and deceitfully to personate any owner of any share or interest in stock of the Bank of England or Ireland, or of any corporation or society established by charter or act of parliament; or any owner of any dividend payable in respect thereof:—and thereby to endeavour to transfer the share or receive money due to the true owner, are, all of them, felonies, and make the offender liable to the punishments above specified (*f*).

V. *Obtaining property by false pretences.* This offence, which, like the last, is closely allied to larceny, though distinguishable from it as being perpetrated through the medium of a mere *fraud*,—was likewise a misdemeanor, at common law, punishable by fine and imprisonment. And now, by statute, whosoever shall, by any false pretence, obtain from another any chattel, money or valuable security (*g*), with intent to cheat or defraud any person

(*b*) By 22 & 23 Vict. c. 17, and 30 & 31 Vict. c. 35, if an indictment alleging this offence shall be presented to, or found by, a grand jury, security for the due prosecution of the charge must, in some cases, be given.

(*c*) 2 East, P. C. c. xx. s. 5.

(*d*) See 7 Geo. 4, c. 16, s. 38; 2 Will. 4, c. 53, s. 49; 9 & 10 Vict. c. 24, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*e*) See 11 Geo. 4 & 1 Will. 4, c. 20, s. 84; 9 & 10 Vict. c. 24, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 8.

(*f*) 24 & 25 Vict. c. 98, s. 3. See also 30 & 31 Vict. c. 131, s. 35, as to personation in respect of shares or share warrants or coupons.

(*g*) As to a *false pretence*, see R. *v.* Crossley, 2 M. & Rob. 17;

of the same,—shall be guilty of a misdemeanor, and be liable to penal servitude for five years (*h*); or he may be punished by imprisonment not exceeding two years, with or without hard labour and solitary confinement (*i*). There is also a provision, that if, upon the trial of any person indicted for such a misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to *larceny*, he shall not by reason thereof be entitled to be acquitted of such misdemeanor (*k*); and further, that the same penalties shall attach to whomsoever shall, with intent to defraud or injure any person, by any false pretence fraudulently cause or induce another to execute, make, accept, endorse or destroy the whole or any part of any valuable security; or to write or affix his name, or that of any other person or persons, or the seal of any corporation or society, upon any paper or parchment, in order that the same may be made or converted into a valuable security (*l*).

VI. *Fraudulent concealment of deeds, or falsification of pedigree.* By 22 & 23 Vict. c. 35, s. 24 (amended by 23 & 24 Vict. c. 38, s. 8), any seller or mortgagor of land, or of chattels real or personal, or choses in action conveyed or assigned to a purchaser or mortgagee—or the solicitor or agent of such seller or mortgagor,—who (with intent to defraud) shall cancel any settlement, deed, will,

R. *v.* Ady, 7 Car. & P. 140; R. *v.* Asterley, ibid. 191; R. *v.* Williams, ibid. 354; R. *v.* Barnard, ibid. 784; R. *v.* Masterton, 2 Cox's Cr. C. 100; Reg. *v.* Sherwood, 26 L. J. (M. C.) 81; The Queen *v.* Goss, 29 L. J. (M. C.) 86; The Queen *v.* Francis Naylor, Law Rep., 1 C. C. 4. As to the term *valuable security*, see Reg. *v.* Greenhalgh, 1 Dearsley's C. C. R. 267; R. *v.* Danger, 5 W. R. (C. C. R.) 738. The provision applies, though the money, &c. be delivered to some person other than, but for the benefit of, the person making the false pretence. (24 & 25 Vict. c. 96, s. 89.)

(*h*) See 27 & 28 Vict. c. 47.

(*i*) 24 & 25 Vict. c. 96, s. 88.

(*k*) 36 Geo. 3, c. 7. See The Queen *v.* Robinson, 28 L. J. (M. C.) 58.

(*l*) 24 & 25 Vict. c. 96, s. 90. This provision is framed upon 21 & 22 Vict. c. 47, repealed by 24 & 25 Vict. c. 95.

or other instrument material to the title, or conceal any incumbrance from the purchaser or mortgagee, or falsify any pedigree upon which the title depends, in order to induce him to accept the title,—shall be guilty of a misdemeanor punishable with fine or with imprisonment not exceeding two years, (with or without hard labour,) or by both. But no prosecution shall be commenced without the sanction of the attorney-general, (or, if that office be vacant, solicitor-general,) nor without previous notice to the person intended to be prosecuted.

CHAPTER VI.

OF OFFENCES AGAINST THE GOVERNMENT.

THE order of our distribution will next lead us to take into consideration, such crimes and misdemeanors as affect men, not in their capacity of individuals, or in respect of their persons or property, but in their capacity of members of the commonwealth; in respect, in short, of those rights which are common to all the subjects of the realm. These may be divided into the following species: viz., offences against the sovereign or civil government; against religion; against the law of nations; against justice; against the peace; against trade; and against the public health, police or economy. Under the first of these heads we shall advert, in the first place, to the crime of treason.

I. [Treason, *proditio*, in its very name, imports a betraying, treachery, or breach of faith; and the crime of which we here speak, is treachery against the sovereign or liege lord (*a*): and as it is the highest crime which,

(*a*) "It therefore happens only "between allies," (saith the Mirrour, c. 1, s. 7,) "for treason is in- "deed a general appellation made "use of by the law to denote not "only offences against the king and "government: but also that accu- "mulation of guilt which arises "whenever a superior reposes a "confidence in a subject or inferior, "between whom and himself there "exists a natural, civil, or even a "spiritual relation; and the inferior "so abuses that confidence, so for- "gets the obligations of duty, sub- "jection, and allegiance, as to de- "stroy the life of any such superior "or lord. This is looked upon as "proceeding from the same principle "of treachery in private life, as "would have urged him who har- "bours it to have conspired in pub-

[considered as a member of the community, any man can possibly commit, it ought therefore to be the most precisely ascertained. For if the crime of treason be indeterminate, this alone, (says the president Montesquieu,) is sufficient to make any government degenerate into arbitrary power (*c*). And yet, by the antient common law, there was a great latitude left in the breast of the judges to determine what was treason or not so, whereby the creatures of tyrannical princes had opportunity to create abundance of constructive treasons: that is, to raise, by forced and arbitrary constructions, offences into the crime and punishment of treason which never were suspected to be such. Thus in the twenty-first year of Edward the third it was held to be treason, by *accroaching* or attempting to exercise royal power (a very uncertain charge), in a knight of Hertfordshire, who forcibly assaulted and detained one of the king's subjects till he paid him 90*l.*; a crime, it must be owned, well deserving of punishment, but which seems to be of a complexion very different from that of treason (*d*). Killing the king's father or brother, or even his messenger, has also fallen under the same denomination (*e*): the latter of which is almost as tyrannical a doctrine as that of the imperial constitution of Arcadius and Honorius; which determined that any attempts or designs against the ministers of the prince should be treason (*f*).

" lic against his liege lord and sove-
" reign. And therefore for a wife
" to kill her lord or husband, a
" servant his lord or master, and an
" ecclesiastic his lord or ordinary;
" these, being breaches of the lower
" allegiance of private and domestic
" faith, are denominated *petit* trea-
" sons. But when disloyalty so
" rears its crest as to attack even
" majesty itself, it is called, by way
" of eminent distinction, *high* trea-
" son, being equivalent to the *cri-*
" *men læsæ majestatis* of the Ro-
" mans." 4 Bl. Com. 75. Since the time of Blackstone, however, the offence of *petit* treason has been abolished (9 Geo. 4, c. 31, s. 2); and it has been thought therefore inconvenient to retain, in these Commentaries, the correlative term of *high* treason.

(*c*) Sp. L. b. xii. c. 7.

(*d*) 1 Hale, P. C. 80.

(*e*) Britt. c. 22; Hawk. P. C. b. 1, c. 17, s. 1.

(*f*) Cod. 9, 8, 5.

[But, however, to prevent the inconveniences which began to arise in England from this multitude of constructive treasons, the statute 25 Edw. III. c. 2, was made, which defines what offences only, for the future, should be held to be treason; in like manner as the *lex Julia majestatis* among the Romans, promulged by Augustus Cæsar, comprehended all the antient laws that had before been enacted to punish transgressors against the State (*g*). We shall find that, under this statute of Edw. III., the crime of treason consists of five distinct branches (*h*).

1. "When a man doth compass or imagine the death "of our lord the king, of our lady his queen, or of their "eldest son and heir." Under this description it is held that a queen *regnant* is within the words of the Act, being invested with royal power, and as much entitled to the allegiance of her subjects as if she had been a king (*i*); but the husband of such a queen is not comprised within these words, and therefore no treason can be committed against him (*k*). The king here intended is the king in possession, without any respect to his title; for it is held that a king *de facto*, and not *de jure*,—or, in other words, an usurper that hath got possession of the throne, —is a king within the meaning of the statute; as there is a temporary allegiance due to him for his administration of the government and temporary protection of the public. And therefore treasons committed against Henry the sixth were punished under Edward the fourth, though all the

(*g*) Gravin. Orig. 1, s. 34.

(*h*) Blackstone (vol. iv. p. 83) notices two additional species of treason under the statute of Edward the third, viz., 1, "counterfeiting the "king's great or privy seal;" and 2, "counterfeiting the king's money, "and bringing false money into the "realm, counterfeit to the money of "England, knowing the same to be "false, to merchandize and make "payment withal." But as to the first of these, though the crime remained a treason under 11 Geo. 4 & 1 Will. 4, c. 66, it is now, by 24 & 25 Vict. c. 98, reduced to an ordinary felony (vide sup. pp. 143, 144); and the second ranks now, merely as the offence of coining; as to which, vide post, p. 189.

(*i*) 1 Hale, P. C. 101; see R. *v.* Oxford, 9 Car. & P. 525.

(*k*) 3 Inst. 7; 1 Hale, P. C. 106.

[line of Lancaster had been previously declared usurpers by act of parliament. But the most rightful heir of the crown, (or king *de jure*, and not *de facto*,) who hath never had plenary possession of the throne,—as was the case of the house of York, during the three reigns of the line of Lancaster,—is not a king, within this statute, against whom treasons may be committed (*l*). And a very sensible writer on the Crown law carries the point of possession so far, that he holds that a king out of possession, is so far from having any right to our allegiance by any other title which he may set up against the king in being, that we are bound by the duty of our allegiance to resist him (*m*): a doctrine which he grounds upon the statute 11 Hen. VII. c. 1; which is declaratory of the common law, and pronounces all subjects excused from any penalty or forfeiture, which do assist and obey a king *de facto*. But in truth this seems to be confounding all notions of right and wrong: and the consequence would be, that when Cromwell had murdered the elder Charles, and usurped the power, though not the name of king, the people were bound in duty to hinder the son's restoration; and that were any foreign prince to invade this kingdom, and by any means to get possession of the Crown—a term, by the way, of very loose and indistinct signification—the subject would be bound by his allegiance to fight for his natural prince to-day, and by the same duty of allegiance to fight against him to-morrow. The true distinction seems to be, that the statute of Henry the seventh does by no means *command* any opposition to a king *de jure*, but *excuses* the obedience paid to a king *de facto*. When therefore an usurper is in possession, the subject is *excused* and *justified* in obeying and giving him assistance; otherwise, under an usurpation, no man could be safe, if the lawful prince had a right to hang him for obedience to the powers in being, as the usurper would certainly do for

(*l*) 3 Inst. 7; 1 Hale, P. C. 104. (*m*) Hawk. P. C. b. 1, c. 17, s. 16.

[disobedience. Nay, further, as the mass of people are imperfect judges of title, (of which, in all cases, possession is *primâ facie* evidence,) the law compels no man to yield obedience to that prince, whose right is, by want of possession, rendered uncertain and disputable, till Providence shall think fit to interpose in his favour, and decide the ambiguous claim; and therefore, till he is entitled to such allegiance by possession, no treason can be committed against him. Lastly, a king who has resigned his crown, such resignation being admitted and ratified in parliament, is, (according to Sir M. Hale,) no longer the object of treason (*n*). And the same reason holds in case the king abdicates the government, or, by actions subversive of the constitution, virtually renounces the authority which he claims by that very constitution; since, as was formerly observed, when the fact of abdication is once established and determined by the proper judges, the consequence necessarily follows that the throne is thereby vacant, and he is no longer king (*o*).

Let us next see what is a *compassing* or *imagining* the death of the king, &c. These are synonymous terms; the word *compass* signifying the purpose or design of the mind or will (*p*); and not, as in common speech, the carrying such design into effect (*q*); and, therefore, an accidental stroke, which may mortally wound the sovereign *per infortunium*, without any traitorous intent, is no treason. As was the case of Sir Walter Tyrrel; who, by the command of King William Rufus, shooting at a hart, the arrow glanced against a tree and killed the king upon the spot (*r*). But as this compassing or imagining is an act of the mind, it cannot possibly fall under any judicial cognizance, unless it be demonstrated by some

(*n*) 1 Hale, P. C. 104.

(*o*) Vide sup. bk. IV. pt. I. c. VI.

(*p*) By the antient law the *compassing* or intending the death of any man, if demonstrated by some evident fact, was equally penal as homicide itself. (3 Inst. 5.)

(*q*) 1 Hale, P. C. 107.

(*r*) 3 Inst. 6.

[open or *overt* act. And yet the tyrant Dionysius is recorded to have executed a subject barely for dreaming that he had killed him; which was held for sufficient proof, that he had thought thereof in his waking hours(*s*).

But such is not the temper of the English law; and therefore it is necessary that there shall appear an open or overt act of a more full and explicit nature, to convict the traitor upon (*t*). The statute expressly requires that the accused "be thereof, upon sufficient proof, attainted of 'some open act' by men of his own condition." Thus to provide weapons or ammunition for the purpose of killing the king, is held to be a palpable overt act of treason in imagining his death (*u*).

To conspire to imprison the king by force, and move towards it by assembling company, is an overt act of compassing the king's death (*x*). For all force, used to the person of the king, in its consequence may tend to his death; and is a strong presumption of something worse intended than the present force, by such as have so far thrown off their bounden duty to their sovereign; it being an old observation, that there is generally but a short interval between the prisons and the graves of princes. There is no question, also, but that taking any measures to render such treasonable purposes effectual,—as assembling and consulting on the means to kill the king,—is a sufficient overt act of treason (*y*).

How far mere *words* spoken by an individual, and not relative to any treasonable act or design then in agitation, shall amount to treason, was formerly matter of doubt. And we have two instances in the reign of Edward the fourth, of persons executed for treasonable words,—the one a citizen of London, who said he would make his son

(*s*) Plutarch *in vit. Dionysii.*

(*t*) By 7 Will. 3, c. 3, s. 8, it is provided, "that no evidence shall "be admitted or given of any overt "act that is not expressly laid in "the indictment, against any per- "son or persons whatsoever."

(*u*) 3 Inst. 12.

(*x*) 1 Hale, P. C. 109.

(*y*) See Fost. 194, 195.

[heir of the *crown*, such being the sign of the house in which he lived; the other a gentleman, whose favourite buck the king killed in hunting, whereupon he wished it, horns and all, in the king's belly (*z*). But these were even then esteemed hard cases: Chief Justice Markham choosing rather to leave his place, than assent to the latter judgment (*a*). And now it seems clearly to be agreed, that, by the common law and the statute of Edward the third, words spoken, however atrocious in their nature, amount only to a high misdemeanor. For they may be spoken in heat, without any intention; or be mistaken, perverted or misremembered by the hearers; their meaning depends always on their connexion with other words and things; they may signify differently, even according to the tone of voice with which they are delivered; and sometimes silence itself is more expressive than any discourse. As, therefore, there can be nothing more equivocal and ambiguous than words, it would indeed be unreasonable to make them amount to treason; and accordingly in the fourth year of Charles the first, on a reference to all the judges, concerning some very atrocious words spoken by one Pyne, they certified to the king, "that though the words were as wicked as "might be, yet there was no treason: for, unless it be "by some particular statute, no words will be trea-"son" (*b*). If indeed, the words be set down in writing, it argues more deliberate intention; and it has been held that writing is, in itself, an overt act of treason, for

(*z*) 1 Hale, P. C. 115; 4 Bl. Com. p. 80. The cases here referred to by Blackstone, are those of William Walker and of Sir Thomas Burdet. But it is said in Stow's Chron. p. 415, that the charge against Walker was for words spoken against the title of the king when he was proclaimed; and it appears from Cro. Car. p. 121, that the charge against Burdet was of having conspired to kill the king and prince by casting their nativity, foretelling their speedy death, and scattering papers containing the prophecy amongst the people.—See Foss's Judges of England, vol. iv. pp. 414—416.

(*a*) Hale, ubi sup.

(*b*) Pyne's case, Cro. Car. 117; Williams's case, ibid. 126.

[*scribere est agere.* But even in this case, the bare words are not the treason, but the deliberate act of writing them. And such writing, though unpublished, has in some arbitrary reigns convicted its author of treason: particularly in the cases of one Peachum, a clergyman, for treasonable passages in a sermon never preached (*c*); and of Algernon Sidney, for some papers found in his closet; which, had they been plainly relative to any previous formed design of dethroning or murdering the king, might doubtless have been properly read in evidence as overt acts of that treason, which was specially laid in the indictment (*d*). But being merely speculative, without any intention, so far as appeared, of making any public use of them, the convicting the authors upon such an insufficient foundation has been universally disapproved. Peachum was therefore pardoned; and though Sidney indeed was executed, yet it was to the general discontent of the nation, and his attainder was afterwards reversed by parliament. There was then no manner of doubt but that the publication of such a treasonable writing, was a sufficient overt act of treason at the common law; though in later times even that has been questioned (*e*).

2. The second species of treason is, "If a man do "violate the king's companion, or the king's eldest "daughter unmarried, or the wife of the king's eldest "son and heir." By the king's companion, is meant his wife; and by violation is understood carnal knowledge, as well without force as with it. And this is treason in both parties, if both be consenting, as some of the wives of Henry the eighth by fatal experience evinced. The plain intention of this law is to guard the blood royal from any suspicion of bastardy, whereby the succession to the crown might be rendered dubious; and therefore when this reason ceases, the law ceases with it; for to violate a queen (or princess) dowager is held to be no

(*c*) Williams's case, Cro. Car. 126.
(*d*) Foster, 198.
(*e*) See 1 Hale, P. C. 118; Hawk. P. C. b. 1, c. 17, s. 32.

[treason (*f*). In like manner as, by the feudal law, it was a felony and attended with a forfeiture of the fief, if the vassal vitiated the wife, or daughter of his lord (*g*); but not so, if he only vitiated his widow (*h*).

3. The third species of treason is, "If a man do levy "war against our lord the king in his realm." And this may be done by taking arms, not only to dethrone the king, but under pretence to reform religion or the laws (*i*), or to remove evil councillors, or other grievances, whether real or pretended (*k*). For the law does not, neither can it, permit any private man, or set of men, to interfere forcibly in matters of such high importance; especially as it has established a sufficient power for these purposes in the high court of parliament. Neither does the constitution justify any private or particular resistance, for private or particular grievances; though, in cases of national oppression, the nation has very justifiably risen as one man, to vindicate the original contract subsisting between the king and his people. To resist the king's forces, by defending a castle against them, is a levying of war; and so is an insurrection with an avowed design to pull down *all* inclosures, *all* brothels, and the like; the universality of the design making it a rebellion against the state, an usurpation of the powers of government, and an insolent invasion of the king's authority (*l*). But a tumult with a view to pull down a particular house, or lay open a particular inclosure,

(*f*) 3 Inst. 9. The instances specified in 25 Edw. 3, c. 2, however, do not prove much consistency in the application of this reason; for there is no protection given to the wives of the younger sons of the king; though their issue must inherit the crown before the issues of the king's eldest daughter: and her chastity is only inviolable before marriage, whilst her children would be clearly illegitimate. Before the twenty-fifth year of Edward the third, it was held to be treason not only to violate the wife and daughter of the king, but also the nurses of his children, *les norices de lour enfans*. (Christian's Blackstone.)

(*g*) Feud. l. 1, t. 5.

(*h*) Ibid.

(*i*) Doug. 590.

(*k*) Hawk. P. C. b. 1, c. 17, s. 25.

(*l*) 1 Hale, P. C. 132.

[amounts at most to a riot; this being no general defiance of public government. So, if two subjects quarrel and levy war against each other,—in that spirit of private war which prevailed over all Europe in the early feudal times,—it is only a great riot and contempt, and no treason (*m*). Thus it happened between the Earls of Hereford and Gloucester, in the twentieth year of Edward the first; who raised each a little army, and committed outrages upon each other's lands, burning houses, attended with the loss of many lives: yet this was held to be no treason, but only a great misdemeanor (*n*). A bare conspiracy to levy war, does not amount to this species of treason; but if particularly pointed at the person of the king or his government, it falls within the first species, —viz., of compassing or imagining the king's death (*o*).

4. "If a man be adherent to the king's enemies in his "realm, giving to them aid and comfort in the realm or "elsewhere," he is also declared guilty of treason. This must likewise be proved by some overt act, as by giving them intelligence (*p*); by sending them provisions; by selling them arms; by treacherously surrendering them a fortress, or the like (*q*). By enemies, are here understood the subjects of foreign powers with whom we are at open war. As to foreign pirates or robbers who may happen to invade our coasts, without any open hostilities between their nation and our own, and without any commission from any prince or state at enmity with the Crown of Great Britain,—the giving them assistance is also clearly treason; either in the light of adhering to the public enemies of the king and kingdom, or else in that of levying war against his majesty (*r*). And, most indisputably, the same acts of adherence or aid, which, when applied to foreign enemies, will constitute treason

(*m*) See Robertson, Chas. V., vol. i. 45, 286.
(*n*) 1 Hale, P. C. 136.
(*o*) 3 Inst. 9; Foster, 211, 213.
(*p*) Dr. Hensy's case, 1 Burr. 650; R. *v.* Stone, 6 T. R. 527.
(*q*) 3 Inst. 10.
(*r*) Foster, 219.

[under this branch of the statute, will, when afforded to our own fellow-subjects in actual rebellion at home, amount to the same crime, under the description of levying war against the king (*s*). But to relieve a rebel, fled out of the kingdom, is no treason; for the statute is taken strictly, and a rebel is not an *enemy;* an enemy being always the subject of some foreign prince, and one who owes no allegiance to the Crown of England (*t*). And, if a person be under circumstances of actual force and constraint, through a well-grounded apprehension of injury to his life or person, this fear or compulsion will excuse his even joining with either rebels or enemies *in* the kingdom, provided he leaves them whenever he hath a safe opportunity.

5. The last species of treason under this statute is, "If a man slay the chancellor, treasurer, or the king's "justices of the one bench or the other, justices in eyre "or justices in assize, and all other justices assigned to "hear and determine, being in their places doing their "offices." These high magistrates, as they represent the king's majesty during the execution of their offices, are therefore for the time equally regarded by the law. But this statute extends only to the actual killing of them, and not to wounding or a bare attempt to kill them. It extends also only to the officers therein specified; and therefore the barons of the Exchequer, as such, are not, it has been said, within the protection of this Act (*u*); but the lord keeper, or commissioners, of the Great Seal, seem to be within it,—by virtue of the statutes 5 Eliz. c. 18, and 1 Will. & Mary, c. 21 (*x*).

(*s*) Foster, 216.

(*t*) Hawk. P. C. b. 1, c. 17, s. 28.

(*u*) 1 Hale, P. C. 231.

(*x*) By the statute 7 Anne, c. 21, it is made treason to slay any of the lords of session, or lords of justiciary, sitting in judgment. It is also provided, that the crimes of treason, and misprision of treason, shall be exactly the same in England and Scotland; and that no acts in Scotland, except those above specified, shall be construed as treason in Scotland, which are not treason in England; and that all persons prosecuted in Scotland, for treason, or

[Thus careful was the legislature in the reign of Edward the third, to specify and reduce to a certainty the vague notions of treason that had formerly prevailed in our courts. But the Act does not stop here, but goes on as follows: "Because other like cases of treason may happen in time "to come, which cannot be thought of or declared at "present, it is accorded, that if any other case supposed "to be treason, which is not above specified, doth happen "before any judge, the judge shall tarry without going "to judgment of the treason, till the cause be showed and "declared before the king and his parliament, whether "it ought to be judged treason or other felony." Sir M. Hale is very high in his encomiums on the great wisdom and care of the parliament, in thus keeping judges within the proper bounds and limits of this Act, by not suffering them to run out upon their own opinions into constructive treasons, though in cases that seem to them to have a like parity of reason; but reserving them to the decision of parliament (*y*). This is a great security to the public, the judges, and even this sacred Act itself; and leaves a weighty *memento* to judges to be careful, and not over-hasty in letting in treasons by construction or interpretation, especially in new cases that have not been resolved and settled. Sir M. Hale also observes, that as the authoritative decision of these *casus omissi* is reserved to the king and parliament, the most regular way to do it is by a new declarative act; and therefore the opinion of any one or of both houses, (though of very respectable weight,) is not that solemn declaration referred to by this Act, as the only criterion for judging of future treasons (*z*).

In consequence of this power,—not indeed originally granted by the statute of Edward the third, but constitutionally inherent in every subsequent parliament, which cannot be abridged of any rights by the act of a precedent

misprision thereof, shall be tried in the same manner as if they had been prosecuted for the same crime in England.

(*y*) 1 Hale, P. C. 259.

(*z*) Ibid.

[one,—the legislature was extremely liberal in declaring new treasons in the unfortunate reign of King Richard the second: as, particularly, the killing of an ambassador was made so. Which seems to be founded upon better reason than the multitude of other points that were then strained up to this high offence; the most arbitrary and absurd of all which was by the statute 21 Rich. II. c. 3,—which made the bare purpose and intent of killing or deposing the king, without any overt act to demonstrate it, treason. And yet so little effect have over-violent laws to prevent any crime, that within two years afterwards this very prince was both deposed and murdered. And in the very first year of his successor's reign an Act was passed, reciting "that no man knew how he ought to "behave himself, to do, speak or say, for doubt of such "pains of treason; and therefore it was accorded, that in "no time to come any treason be judged, otherwise than "was ordained by the statutes of King Edward the "third" (*a*). This at once swept away the whole load of extravagant treasons, introduced in the time of Richard the second.

But afterwards, between the reign of Henry the fourth and Queen Mary, and particularly in the bloody reign of Henry the eighth, the spirit of inventing new and strange treasons was revived. Among which, we may reckon the offences of clipping money; breaking prison or rescue when the prisoner is committed for treason; burning houses to extort money; stealing cattle by Welshmen; counterfeiting foreign coin; wilful poisoning; execrations against the king, calling him opprobrious names by public writing; refusing to abjure the pope; deflowering, or marrying without the royal licence, any of the king's children, sisters, aunts, nephews or nieces; bare solicitation of the chastity of the queen or princess, or advances made by themselves; marrying with the king, by a woman not a virgin, without previously discovering to him such her un-

(*a*) Stat. 1 Hen. 4, c. 10.

[chaste life; judging or *believing*, (manifested by an overt act,) the king to have been lawfully married to Anne of Cleves; derogating from the king's royal style and title, impugning his supremacy, and assembling riotously to the number of twelve, and not dispersing upon proclamation. All which new-fangled treasons were totally abrogated by the statute 1 Edward VI. c. 12, (confirmed by statute 1 Mary, c. 1), which once more reduced all treasons to the standard of the statute of the twenty-fifth year of Edward the third. But since the reign of Mary, addition has again been made to the number of treasonable offences created by act of parliament. For by statute 1 Anne, st. 2, c. 17, s. 3, if any person shall endeavour to deprive or hinder any person, being the next in succession to the Crown according to the limitations of the Act of Settlement, from succeeding to the Crown, and shall maliciously and directly attempt the same by any overt act,—such offence shall be treason. By statute 6 Anne, c. 7, if any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm that any other person hath any right or title to the Crown of this realm, otherwise than according to the Act of Settlement; or that the kings of this realm, with the authority of parliament, are not able to make laws and statutes to bind the Crown and the descent thereof,—such person shall be guilty of treason. This offence, (or indeed maintaining this doctrine in anywise, that the king and parliament cannot limit the Crown,) was once before made treason by statute 13 Eliz. c. 1, during the life of that princess. And after her decease, it continued a high misdemeanor, punishable only with forfeiture of goods and chattels, even in that most flourishing era of indefeasible hereditary right and *jure divino* succession. But it was again raised into treason, by the statute of Anne above mentioned, at the time of a projected invasion in favour of the then pretender; and upon this statute one Matthews, a printer, was convicted and executed, in 1719, for printing a treasonable pamphlet, en-

[titled, "*Vox populi vox Dei*" (*b*).] Lastly, by 36 Geo. III. c. 7 (*c*), if any person shall, either within the realm or without, compass, imagine or intend death, destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the king, his heirs and successors; and shall express, utter or declare such intention by publishing any printing or writing, or by any overt act,—he shall be adjudged a traitor.

[Thus much for the crime of treason, or *læsæ majestatis*, in all its branches (*d*); which consists, we may observe, originally, in grossly counteracting that allegiance which is due from the subject by either birth or residence; though, in some instances, the zeal of our legislators to stop the progress of some highly pernicious practices has occasioned them to depart a little from this primitive idea. It is now, however, time to pass on from defining the crime, to describing its punishment.]

The offence of treason is, (by exception from the general rule of the Crown law,) subject to limitation in respect of time. For by 7 Will. III. c. 3, no person shall be prosecuted for treason, but within three years after the commission of the offence; except only in the case of a designed assassination of the sovereign, by poison or otherwise.

(*b*) State Tr. ix. 680.

(*c*) The 36 Geo. 3, c. 7 (which was at first temporary only), was made perpetual by 57 Geo. 3, c. 6; and it having been doubted whether it extended to Ireland, it was expressly extended to that country by 11 & 12 Vict. c. 12.

(*d*) Besides the above treasons, Blackstone (vol. iv. pp. 88 et seq.) mentions many others created since the reign of Mary, which he divides into—1st, such as relate to Papists; 2nd, such as relate to falsifying the coin or other royal signatures; and 3rd, those created for the security of the Protestant succession in the house of Hanover. But the statutes of the two first classes, have been repealed by the 7 & 8 Vict. c. 102, and 2 Will. 4, c. 34; and those of the third, (with the exception of such as are noticed in the text,) have lost their importance by the extinction of the line of the Pretender, against whom their provisions were directed.

Until recently, the punishment of treason, appointed by law, was more terrible than those inflicted for the crime of murder itself. For the sentence ran—1. That the offender be drawn on a hurdle to the place of execution. 2. That he be hanged by the neck, until he be dead. 3. That his head be severed from the body. 4. That his body be divided into four quarters. 5. That his head and quarters shall be at the disposal of the Crown. But the sovereign, after sentence, by warrant under his sign-manual counter-signed by a principal secretary of state, might change the whole sentence into beheading, or even remit the capital punishment altogether: and the sentence upon women, (the decency due to whose sex forbade the exposing and publicly mangling their bodies,) was, only that they were to be drawn to the place of execution, and hanged by the neck until they were dead (*f*). And now by the Felony Act, 1870 (33 & 34 Vict. c. 23), s. 31, the only portion of the sentence previously in use which is retained for the future, is that part which directs that the traitor shall be hanged by the neck till he be dead.

We proceed next to consider certain offences which, though they fall short of treason, are, like it, injurious to the person, prerogative, or government of the sovereign. As—

(*f*) In Blackstone's time (see vol. iv. p. 92), the sentence on a traitor was still more dreadful; for as the law then stood (in addition to the solemnities mentioned in the text), the traitor, if a male, was, 1st, to be drawn on a sledge or hurdle to the gallows; 2nd, to be hanged by the neck, and then cut down alive; 3rdly, his entrails were to be taken out and burned while he was yet alive. And if a woman, she was to be drawn to the gallows, and there burned alive. But the sentence was altered to the form in which it is stated above, by 30 Geo. 3, c. 48, s. 1, and 54 Geo. 3, c. 146. Also the abolished incidents of attainder, forfeiture and corruption of blood formerly attached to the crime of treason, as well as to some other crimes.

II. *Misprision* of treason.

[Misprisions, a term derived from the old French *mespris*, a neglect or contempt, are, in the acceptation of our law, generally understood to be all such high offences as rank not amongst such as are or were capital, but are closely bordering thereon: and it is said that a misprision is contained in every treason and felony whatsoever; and that, if the king so please, the offender may be proceeded against for the misprision only (*g*). And upon the same principle, while the jurisdiction of the Star Chamber subsisted, it was held that the king might remit a prosecution for treason, and cause the delinquent to be censured in that court merely for a high misdemeanor: as happened in the case of Roger, Earl of Rutland, in the forty-third year of Elizabeth, who was concerned in the Earl of Essex's rebellion (*h*). Misprisions are generally divided in our books into two sorts; negative, which consist in the concealment of something which ought to be revealed; and positive, which consist in the commission of something which ought not to be done. The latter, however, are not denominated in common language as misprisions, but rather as *contempts* or *high misdemeanors* (*i*). Misprision of treason consists of the bare knowledge and concealment of treason, without any degree of assent thereto, for any assent makes the party a principal traitor: as indeed the concealment, which was construed aiding and abetting, did at the common law. But it is now enacted by the statute 1 & 2 P. & M. c. 10, that a bare concealment of treason, shall be only held a misprision.

This concealment becomes criminal if the party apprised of the treason does not, as soon as conveniently may be, reveal it to some judge of assize or justice of the peace (*k*). But if there be any probable circumstances of assent,—

(*g*) Year Book, 2 Rich. 3, 10; Staundf. P. C. 37; Kel. 71; 1 Hale, P. C. 374; Hawk. P. C. b. 1, c. 20.

(*h*) Hudson, of the Court of Star Chamber, MS. in Mus. Brit.; Collectanea Juridica; vol. ii. p. 1—241.

(*i*) 4 Bl. Com. 121.

(*k*) 1 Hale, P. C. 372.

[as if one goes to a treasonable meeting, knowing beforehand that a conspiracy is intended against the king; or, being in such company once by accident, and having heard such treasonable conspiracy, meets the same company again, and hears more of, but conceals it:—this is an implied assent in law, and makes the concealer guilty of actual treason (*l*).

The punishment of misprision of treason is stated in the books to be the loss of the profit of the lands of the offender during life, forfeiture of his goods, and imprisonment during life; which total forfeiture of the goods was originally inflicted while the offence amounted to principal treason, and, of course, included in it a felony by the common law (*m*).] But no conviction for treason or felony now causes any forfeiture (*n*).

III. A third offence falling under the denomination of the present chapter, is one provided against by 5 & 6 Vict. c. 51. It is that of a person who shall wilfully discharge, point, aim or present at the person of the Queen, any gun or other arms, whether containing explosive materials or not; or who shall strike at or attempt to throw any thing upon the Queen's person; or who shall produce any firearms or other arms, or any explosive or dangerous matter, near her majesty's person;—with intent, in any of these cases, to injure or alarm her, or to commit a breach of the peace. And any one so offending is guilty of a high misdemeanor: and is made liable to penal servitude for seven or not less than five years (*o*); or to imprisonment for not more than three years, and (if the court shall so direct) to be whipped not more than thrice during that period (*p*).

IV. A fourth offence of this nature—sometimes de-

(*l*) Hawk. P. C. b. 1, c. 20, s. 3.
(*m*) 1 Hale, P. C. 374.
(*n*) 33 & 34 Vict. c. 23, s. 1.
(*o*) See 27 & 28 Vict. c. 47.
(*p*) See 5 & 6 Vict. c. 51; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3.

scribed, though rather inaccurately, as *treason felony*—has also been made the subject of recent legislation, in order to substitute a milder penalty than death, with regard to certain classes of treasonable practices, and thus facilitate the conviction of offenders. For by 11 & 12 Vict. c. 12, intituled "An Act for the better security of the Crown and Government of the United Kingdom," if any person shall (within the united kingdom, or without) compass, imagine, invent, devise or intend to deprive or depose the Queen, her heirs or successors, from the style, honour or royal name of the imperial Crown of the united kingdom, or of any of her majesty's dominions and countries; or to levy war against her majesty, her heirs or successors, within any part of the united kingdom, in order by force or constraint to compel a change of measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, both houses or either house of parliament (*q*); or to move or stir any foreigner or stranger with force to invade the united kingdom, or any other of her majesty's dominions or countries under the obeisance of her majesty, her heirs or successors; and shall express, utter or declare such compassings, imaginations, inventions, devices or intentions, or any of them, by publishing any printing or writing, or by any overt act or deed—the person so offending shall be guilty of felony (*r*). And on conviction he is liable, at the discretion of the court, to be sentenced to penal servitude for life, or for any term not less than five years; or to be imprisoned for any term not exceeding two years, with or without hard labour, as the court shall direct (*s*). And there is a proviso, that if the facts

(*q*) As to the *treasonable* offence of levying war against the king in his realm, vide sup. p. 157. It is to be observed that it is provided in the Act, that nothing therein contained is to lessen the force or in any manner affect anything enacted by the statute of Edw. 3.

(*r*) Three prosecutions under this statute, will be found reported in 3 Cox, C. C. pp. 509, 517, 526. See also Mulcahy *v.* The Queen, Law Rep., 3 Ap. Ca. 306.

(*s*) 11 & 12 Vict. c. 12; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

alleged in the indictment, or proved on the trial of any person charged with felony under this Act shall amount in law to treason,—such indictment shall nevertheless not be deemed void, erroneous or defective; nor shall such person be entitled to be acquitted of the felony; but that no person tried for the felony, shall afterwards be prosecuted for treason upon the same facts (*t*).

V. [A fifth offence of this nature may be by speaking or writing against the sovereign; cursing or wishing him ill; giving out scandalous stories concerning him (*u*), or doing any thing that may tend to lessen him in the esteem of his subjects, may weaken his government, or may raise jealousies between him and his people. It has been also held an offence of this species, to drink to the pious memory of a traitor; or for a clergyman to absolve persons at the gallows, who there persist in the treasons for which they die; these being acts which impliedly encourage rebellion; and for this species of contempt a man may not only be fined and imprisoned, but suffer corporal punishment (*x*).

VI. Under the general title of this chapter we must also advert to *Præmunire*. And this offence, which forms the subject of many stringent statutes long since dormant,

(*t*) This Act also brought within its provisions the expression, utterance or declaration of any such compassings, imaginations, inventions, devices or intentions as are mentioned in the text, *by open and advised speaking* only; but by sect 4, prosecutions for such felonies were to be had only within a certain period after the passing of the Act; which period has now expired.

(*u*) As by asserting falsely that he labours under mental derangement. (R. *v.* Harvey, 2 B. & C. 257.)

(*x*) Hawk. P. C. b. 1, c. 28, s. 3. Blackstone remarks (vol. iv. p. 123), that in the antient German empire, such persons as endeavour to sow sedition and disturb the public tranquillity were condemned to become the objects of public notoriety and derision, by carrying a dog upon their shoulders from one great town to another. The Emperors Otho the first and Frederick Barbarossa inflicted this punishment on noblemen of the highest rank; Blackstone cites Mod. Un. Hist. xxix. 28, 119.

[deserves, nevertheless, from its connection with our political and ecclesiastical history, a more full and particular consideration, than its degree of importance as a matter of practical law might appear to deserve (*y*).

The offence of *præmunire*, was so called from the words of the writ preparatory to the prosecution thereof: *præmunire facias A. B.* (*z*), cause A. B. to be forewarned that he appear before us to answer the contempt wherewith he stands charged; which contempt is particularly recited in the preamble to the writ (*a*). It took its original from the exorbitant power claimed and exercised in England by the Pope; which, even in the days of blind zeal, was too heavy for our ancestors to bear.

It may justly be observed, that religious principles,—which, when genuine and pure, have an evident tendency to make their professors better citizens as well as better men,—have, when perverted and erroneous, been usually subversive of civil government; and been made both the cloak and the instrument, of every pernicious design that can be harboured in the heart of man. The unbounded authority that was exercised by the Druids in the west, under the influence of pagan superstition, and the terrible ravages committed by the Saracens in the east, to propagate the religion of Mahomet,—both witness to the truth of that antient universal observation, that, in all ages and in all countries, civil and ecclesiastical tyranny are

(*y*) The terrible penalties of a *præmunire* are denounced by a great variety of statutes, yet prosecutions upon a *præmunire* are unheard of in our courts. There is only one instance of such a prosecution in the State Trials; in which case the penalties of a *præmunire* were inflicted upon some persons for refusing to take the oath of allegiance in the reign of Charles the second. Harg. St. Tr. vol. ii. p. 463.—Ch.

(*z*) A barbarous word for *præmoneri*. *Præmuneo*, in law Latin, is used for *præmoneo*, or *cito*. (Ducange, Gloss.) Fuller (Cent. xiv. p. 148) suggests that *præmunire* means to fence and fortify the regal power from foreign assault; and this is adopted by D'Aubigné in his Hist. of the Reformation, (vol. v. p. 107.) But the account of the word given by Ducange, seems the true one.

(*a*) Old Nat. Brev. 101, edit. 1534.

[mutually productive of each other. It is, therefore, the glory of the Church of England, that she inculcates due obedience to lawful authority; and hath been, as her prelates on a trying occasion once expressed, in her principles and practice most unquestionably loyal (*b*). The clergy of her persuasion, holy in their doctrines, and unblemished in their lives and conversation, are also moderate in their ambition, and entertain just notions of the ties of society and the rights of civil government. As in matters of faith and morality they acknowledge no guide but the Scriptures, so in matters of external polity and of private right they derive all their title from the civil magistrate; they look up to the king as their head, to the parliament as their lawgiver; and pride themselves in nothing more justly than in being true members of the Church, emphatically *by law* established. Whereas the notions of ecclesiastical liberty in those who differ from them, as well in one extreme as in the other, (for we here only speak of extremes,) are equally and totally destructive of those ties and obligations by which all society is kept together; equally encroaching on those rights which reason and the original contract of every free state in the universe, have vested in the sovereign power; and equally aiming at a distinct independent supremacy of their own, where spiritual men and spiritual causes are concerned. The dreadful effect of such a religious bigotry, when actuated by erroneous principles, even of the Protestant kind, are sufficiently evident from the history of the anabaptists in Germany, the covenanters in Scotland, and that deluge of sectaries in England who murdered their sovereign, and overturned the church and monarchy. But these horrid devastations, the effects of mere madness, or of zeal that was nearly allied to it, though violent and tumultuous, were but of short duration; whereas the progress of papal policy, long actuated by the steady counsels of successive

(*b*) Address to James the second, 1687

[pontiffs, took deeper root; and was at length, in some places with difficulty, in others never yet extirpated. For this we might call to witness the black intrigues of the Jesuits, at one time triumphant over Christendom; but the subject under our present consideration rather leads us to investigate the vast strides which were formerly made in this kingdom by the popish clergy,—how nearly they arrived to effecting their grand design,—some few of the means they made use of for establishing their plan,—and how almost all of them have been defeated or converted to better purposes, by the vigour of our free constitution and the wisdom of successive parliaments.

The antient British Church, by whomsoever planted, was a stranger to the bishop of Rome and all his pretended authority. But the pagan Saxon invaders, having driven the professors of Christianity to remotest corners of our island, their own conversion was afterwards effected by Augustin the monk and other missionaries from the court of Rome. This naturally introduced some few of the papal corruptions in point of faith and doctrine; but we read of no civil authority claimed by the Pope in these kingdoms till the era of the Norman conquest; when the then reigning pontiff, having favoured Duke William in his projected invasion by blessing his host and consecrating his banners, took that opportunity also of establishing his spiritual encroachments; and was even permitted so to do by the policy of the Conqueror, in order more effectually to humble the Saxon clergy and aggrandize his Norman prelates—prelates, who, being bred abroad in the doctrine and practice of slavery, had contracted a reverence and regard for it, and took a pleasure in riveting the chains of a free-born people.

The most stable foundation of legal and rational government, is a due subordination of rank, and a gradual scale of authority; and tyranny also itself is most surely supported, by a regular increase of despotism arising from the slave to the sultan. With this difference, however,

[that the measure of obedience in the one is grounded on the principles of society, and is extended no further than reason and necessity will warrant; in the other it is limited only by absolute will and pleasure, without permitting the inferior to examine the title upon which it is founded. More effectually therefore to enslave the consciences and minds of the people, the Romish clergy themselves paid the most implicit obedience to their own superiors or prelates: and they, in their turns, were as blindly devoted to the will of the sovereign pontiff; whose decisions they held to be infallible, and his authority co-extensive with the Christian world. Hence his legates, *à latere*, were introduced into every kingdom in Europe; his bulls and decretal epistles became the rule both of faith and discipline; his judgment was the final resort in all cases of doubt or difficulty; his decrees were enforced by anathemas and spiritual censures; he dethroned even kings that were refractory: and denied to whole kingdoms, when undutiful, the exercise of Christian ordinances, and the benefits of the gospel of God.

But though the being spiritual head of the Church was a thing of great sound, and of greater authority, yet the court of Rome was fully apprised that among the bulk of mankind power cannot be obtained without property; and therefore its attention began very early to be riveted upon every method that promised pecuniary advantage. The doctrine of purgatory was introduced, and with it the purchase of masses to redeem the souls of the deceased. New-fangled offences were created and indulgences were sold to the wealthy, for liberty to sin without danger.

The canon law took cognizance of crimes, enjoined penances *pro salute animæ*, and commuted that penance for money. Non-residence and pluralities among the clergy, and marriages among the laity related within the seventh degree, were strictly prohibited by canon; but dispensations were seldom denied to those who could afford to buy them. In short, all the wealth of Christendom

[was gradually drained by a thousand channels into the coffers of the holy see.

The establishment also of the feudal system in most of the governments of Europe, whereby the lands of all private proprietors were declared to be holden of the prince, gave a hint to the court of Rome for usurping a similar authority over all the preferments of the Church, which began first in Italy, and gradually spread into England.

The Pope became a feudal lord, and all ordinary patrons were to hold their right of patronage under this universal superior. Estates held by feudal tenure, being originally gratuitous donations, were at that time denominated *beneficia;* their very name as well as constitution was borrowed, and the care of the souls of a parish thence came to be denominated a *benefice* (*c*). Lay fees were conferred by investiture or delivery of corporal possessions; and spiritual benefices, which at first were universally donative, now received in like manner a spiritual investiture by institution from the bishop and induction under his authority. As lands escheated to the lord in defect of a legal tenant, so benefices lapsed to the bishop upon non-presentation by the patron, in the nature of a spiritual escheat. The annual tenths collected from the clergy, were equivalent to the feudal render, or rent, reserved upon a grant; the oath of canonical obedience was copied from the oath of fealty required from the vassal by his superior; the *primer seisins* of our military tenures, whereby the first profits of an heir's estate were cruelly extorted by his lord, gave birth to as cruel an exaction of first-fruits from the beneficed clergy: and the occasional aids and talliages levied by the prince on his vassals, gave a handle to the Pope to levy, by the means of his legates *à latere*, Peter-pence and other exactions.

At length the holy father went a step beyond any ex-

(*c*) Vide sup. vol. I. p. 173.

[ample, of either emperor or feudal lord; he reserved to himself, by his own apostolical authority, the presentation to all benefices which became vacant while the incumbent was attending the court of Rome upon any occasion, or on his journey thither or back again; and, moreover, such also as became vacant by his promotion to a bishopric or abbey, "*etiamsi ad illa personæ consueverint et debuerint per electionem, aut quemvis alium modum, assumi*" (*d*). And this last, the canonists declared, was no detriment at all to the patrons, being only like the change of a life in a feudal estate by the lord.

Dispensations to avoid these vacancies begat the doctrine of *commendams;* and papal *provisions* were the previous nomination to such benefices before they became actually void, though afterwards indiscriminately applied to any right of patronage exerted or usurped by the Pope. In consequence of which the best livings were filled by Italian and other foreign clergy; equally unskilled in, and adverse to, the laws and constitutions of England. The very nomination to bishoprics,—that antient prerogative of the Crown,—was wrested from King Henry the first and afterwards from his successor King John, and seemingly indeed conferred on the chapters belonging to each see; but by means of the frequent appeals to Rome, through the intricacy of the laws which regulated canonical elections, was eventually vested in the Pope. And to sum up this head with a transaction most unparalleled and astonishing in its kind, Pope Innocent the third had at length the effrontery to demand, and King John the meanness to consent to, a resignation of his crown to the Pope, whereby England was to become for ever St. Peter's patrimony; and the dastardly monarch re-accepted his sceptre from the hands of the papal legate, to hold as the vassal of the holy see, at the annual rent of a thousand marks.

(*d*) Extrav. l. 3, t. 2, c. 13.

[Another engine set on foot, or at least greatly improved by the court of Rome, was a masterpiece of papal policy. Not content with the ample provision of tithes which the law of the land had given to the parochial clergy, they endeavoured to grasp at the lands and inheritances of the kingdom; and had not the legislature withstood them, would in time probably have been masters of every foot of ground in the kingdom. To this end they introduced the monks of the Benedictine, and other rules; men of sour and austere religion, separated from the world and its concerns by a vow of perpetual celibacy, yet fascinating the minds of the people by pretences to extraordinary sanctity, while all their aim was to aggrandize the power and extend the influence of their grand superior the Pope. And as in those times of civil tumult, great rapines and violence were daily committed by overgrown lords and their adherents, they were taught to believe that founding a monastery a little before their deaths would atone for a life of incontinence, disorder and bloodshed. Hence, innumerable abbeys and religious houses were built within a century after the Conquest, and endowed not only with the tithes of parishes, (which were ravished from the secular clergy,) but also with lands, manors, lordships, and extensive baronies. And the doctrine inculcated was, that whatever was so given to, or purchased by, the monks and friars, was consecrated to God himself; and that to alienate or take it away was no less than the sin of sacrilege.

We might here have enlarged upon other contrivances set on foot by the court of Rome, for effecting an entire exemption of its clergy from any intercourse with the civil magistrate;—such as the separation of the ecclesiastical court from the temporal; the appointment of its judges by merely spiritual authority, without any interposition from the Crown; the exclusive jurisdiction it claimed over all ecclesiastical persons and causes;

[and the *privilegium clericale*, or benefit of clergy, which delivered all clerks from any trial or punishment except before their own tribunal. But we shall only observe, at present, that notwithstanding this plan of pontifical power was so deeply laid, and was so indefatigably pursued by the unwearied politics of the court of Rome, through a long succession of ages; notwithstanding it was polished and improved by the united endeavours of a body of men who engrossed all the learning of Europe, for centuries together; notwithstanding it was firmly and resolutely executed by persons the best calculated for establishing tyranny and despotism,—being fired with a bigoted enthusiasm which prevailed not only among the weak and simple, but even among those of the best natural and acquired endowments; and being unconnected with their fellow subjects, and totally indifferent what might befal that posterity to which they bore no endearing relation;—yet it vanished into nothing when the eyes of the people were a little enlightened, and they set themselves with vigour to oppose it. So vain and ridiculous is the attempt to live in society, without acknowledging the obligations which it lays us under; and to affect an entire independence of that civil state, which protects us in all our rights; and gives us every other liberty, that only excepted of despising the laws of the community.

Having thus in some degree endeavoured to trace out the original and subsequent progress of the papal usurpation, let us now return to the statutes of *præmunire*; which were framed to encounter this overgrown, yet increasing evil. King Edward the first, a wise and magnanimous prince, set himself in earnest to shake off this servile yoke (*g*). He would not suffer his bishops to attend a general council, until they had sworn not to receive the papal benediction. He made light of all papal

(*g*) Dav. 83, &c.

[bulls and processes: attacking Scotland in defiance of one; and seizing the temporalities of his clergy, who, under pretence of another, refused to pay a tax imposed by parliament. He strengthened the statutes of mortmain; thereby closing the great gulf, in which all the lands of the kingdom were in danger of being swallowed: and one of his subjects having obtained a bull of excommunication against another, he ordered him to be executed as a traitor, according to the antient law (*h*). And in the thirty-fifth year of his reign, was made the first statute against papal provisions; being, according to Sir Edward Coke, the foundation of all the subsequent statutes of *præmunire*; which is ranked as an offence immediately against the sovereign, because every encouragement of the papal power is a diminution of the authority of the Crown (*i*).

In the weak reign of Edward the second, the Pope again endeavoured to encroach, but the parliament manfully withstood him; and it was one of the principal articles charged against that unhappy prince, that he had given allowance to the bulls of the see of Rome. But Edward the third was of a temper extremely different: and to remedy these inconveniences first by gentle means, he and his nobility wrote an expostulation to the Pope; but receiving a menacing and contemptuous answer,—withal acquainting him that the emperor, who, a few years before, at the Diet of Nuremburg, A.D. 1323, had established a law against provisions, and also the king of France, had lately submitted to the holy see;—the king replied, that if both the Emperor and the French king should take the Pope's part, he was ready to give battle to them both in defence of the liberties of the Crown (*j*). Hereupon more sharp and penal laws were

(*h*) Bro. Abr. tit. Coronæ, 115; Treason, 14; 5 Rep. part 1, fol. 12; 3 Ass. 19.

(*i*) 2 Inst. 583.

(*j*) See Mod. Un. Hist. xxix. 293.

[devised against provisors; which enacted, severally, that the court of Rome shall not present or collate to any bishopric or living in England: and that whoever disturbs any patron in the presentation to a living, by virtue of a papal provision, shall pay fine and ransom to the king at his will, and be imprisoned till he renounced such provision; and the same punishment was inflicted on such as cite the king, or any of his subjects, to answer in the court of Rome (*k*). And when the holy see resented these proceedings, and Pope Urban the fifth attempted to revive the vassalage and annual rent to which King John had subjected the kingdom, it was unanimously agreed by all the estates of the realm, in parliament assembled, in the fortieth year of Edward the third, that King John's donation was null and void; being without the concurrence of parliament, and contrary to his coronation oath. And all the temporal nobility and commons engaged, that if the Pope should endeavour, by process or otherwise, to maintain these usurpations, they would resist and withstand him to the utmost of their power (*l*).

In the reign of Richard the second, it was found necessary to sharpen and strengthen these laws; and therefore it was enacted by statutes 3 Ric. II. c. 3, and 7 Ric. II. c. 12, first, that no alien should be capable of letting his benefice to farm,—in order to compel such as had crept in, at least to reside on their preferments; and afterwards that no alien should be capable of being presented to any ecclesiastical preferment, under the penalties of the statutes of provisors. By the statute 12 Ric. II. c. 15, all liege men of the king accepting of a living by any foreign provision, were put out of the king's protection, and the benefice made void. To which the statute 13 Ric. II. st. 2, c. 2, added banishment and forfeiture of lands and goods: and by the third chapter of the same statute, any

(*k*) See stat. 25 Edw. 3, st. 6; 27 Edw. 3, st. 1, c. 3; 38 Edw. 3, st. 2, cc. 1, 2, 3, 4.

(*l*) Seld. in Flet. 10, 4.

[person bringing over any citation or excommunication from beyond sea, on account of the execution of the foregoing statutes of provisors, was to be imprisoned, forfeit his goods and lands, and moreover suffer pain of life and member.

In the writ for the execution of all these statutes, the words *præmunire facias* being, (as we said,) used to demand a citation of the party, have denominated in common speech not only the writ, but the offence itself of maintaining the papal power, by the name of *præmunire:* and accordingly the next statute we shall mention is usually called the Statute of *Præmunire.* It is the statute 16 Ric. II. c. 5; which enacts, that whoever procures at Rome, or elsewhere, any translations, processes, excommunications, bulls, instruments, or other things which touch the king, against him, his Crown and realm; and all persons aiding and assisting therein; shall be put out of the king's protection, their lands and goods forfeited to the king's use, and they shall be attached by their bodies to answer to the king and his council: or process of *præmunire facias* shall be made out against them, as in other case of provisors.

By the statute 2 Hen. IV. c. 3, all persons who accept any provision from the Pope to be exempt from canonical obedience to their proper ordinary, are also subjected to the penalties of *præmunire.* And this is the last of our antient statutes touching this offence; the usurped civil power of the bishop of Rome being pretty well broken down by these statutes, as his usurped religious power was in about a century afterwards; the spirit of the nation being so much raised against foreigners, that about this time, in the reign of Henry the fifth, the alien priories or abbeys for foreign monks were suppressed, and their lands given to the Crown. And even prior to the Reformation, all further attempts on the part of our own ecclesiastics to support these foreign jurisdictions had ceased.

[A learned writer above referred to, is therefore greatly mistaken, when he says, that in the time of Henry the sixth, the archbishop of Canterbury and other bishops offered to the king a large supply, if he would consent that all laws against provisors, and especially the statute of 16 Ric. II., might be repealed; but that this motion was rejected (*m*). This account is incorrect in all its branches. For, first, the application which he probably means, was made not by the bishops only, but by the unanimous consent of a provincial synod, assembled in 1439, in the eighteenth year of Henry the sixth: that very synod, which at the same time refused to confirm and allow a papal bull, which was then laid before them. Next, the purport of it was not to procure a repeal of the statutes against provisors, or that of Richard the second in particular; but to request that the penalties thereof,—which were applied by a forced construction to all that sued in the spiritual, and even in many temporal courts of this realm,—might be turned against the proper objects only, those who appealed to Rome, or to any foreign jurisdictions; the tenor of the petition being, "that those "penalties should be taken to extend only to those that "commenced any suits, or procured any writs or public "instruments at Rome, or elsewhere out of England; "and that no one should be prosecuted upon that statute "for any suit in the spiritual courts, or lay jurisdictions "of this kingdom." Lastly, the motion was so far from being rejected, that the king promised to recommend it to the next parliament; and, in the mean time, that no one should be molested upon this account. And the clergy were so satisfied with their success, that they granted to the king a whole tenth upon this occasion (*n*).

And, indeed, so far was the archbishop, who presided in this synod, from countenancing the usurped power of the Pope in this realm, that he was ever a firm opposer

(*m*) Dav. 96. (*n*) Wilk. Concil. Mag. Brit. iii. 533.

[of it. And, particularly, in the reign of Henry the fifth, he prevented the king's uncle from being then made a cardinal, and legate *à latere* from the Pope; upon the mere principle of its being within the mischief of papal provisions, and derogatory from the liberties of the English church and nation. For, as he expressed himself to the king in his letter upon the subject, "he was bound to "oppose it by his ligeance, and also to quit himself to "God, and the church of this land, of which God and "the king had made him the governor." This was not the language of a prelate addicted to the slavery of the see of Rome; but of one who was indeed of principles so very opposite to the papal usurpations, that in the year preceding this synod, the seventeenth year of Henry the sixth, he refused to consecrate a bishop of Ely that was nominated by Pope Eugenius the fourth,—a conduct quite consonant to his former behaviour in the sixth year of Henry the sixth, when he refused to obey the commands of Pope Martin the fifth, who had required him to exert his endeavours to repeal the statute of *præmunire*; "*illud execrabile statutum*," as the holy father phrases it; which refusal so far exasperated the court of Rome against him, that at length the Pope issued a bull to suspend him from his office and authority, which the archbishop disregarded, and appealed to a general council. And so sensible were the nation of their primate's merit, that the lords spiritual and temporal, and also the University of Oxford, wrote letters to the Pope in his defence; and the house of commons addressed the king to send an ambassador forthwith to his holiness, on behalf of the archbishop, who had incurred the displeasure of the Pope for opposing the excessive power of the court of Rome (*o*).

This, then, is the original meaning of the offence which we call *præmunire*, viz., introducing a foreign power into

(*o*) See Wilk. Concil. Magn. Br. vol. iii. *passim*, and Dr. Duck's Life of Archbishop Chichele.

[this land; and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone, long before the Reformation in the reign of Henry the eighth. At which time the penalties of *præmunire* were indeed extended to more papal abuses than before; as the kingdom then entirely renounced the authority of the see of Rome, though not all the corrupted doctrines of the Romish Church. And, therefore, by the several statutes of 24 Hen. VIII. c. 12, and 25 Hen. VIII. cc. 19 and 21, to appeal to Rome from any of the king's courts, (which, though illegal before, had at times been connived at); to sue to Rome for any licence or dispensation; or to obey any process from thence;—were made liable to the pains of *præmunire*. And in order to restore to the king in effect the nomination of vacant bishoprics, and yet keep up the established forms,—it was enacted by statute 25 Hen. VIII. c. 20, that if the dean and chapter refused to elect the person named by the king, or any archbishop or bishop to confirm or consecrate him, they should fall within the penalties of the statutes of *præmunire*.

So also by statute 13 Eliz. c. 2, to import any *agnus Dei*, crosses, beads, or other superstitious things pretended to be hallowed by the Bishop of Rome, and tender the same to be used; or to receive the same with such intent, and not discover the offender; brought on the offenders the penalties of a *præmunire* (*p*).

Thus far the penalties of *præmunire* seem to have kept within the proper bounds of their original institution, the

(*p*) The penalties imposed by 13 Eliz. c. 2, were repealed by 9 & 10 Vict. c. 59. By 11 & 12 Vict. c. 108, reciting that doubts existed whether her Majesty could lawfully establish diplomatic relations and intercourse with the sovereign of the Roman states,—it was declared and enacted, that such relations and intercourse should be lawful; but with a proviso prohibitory of the reception at the Court of London of any diplomatic agent from Rome who shall be in holy orders in the Church of Rome, or a Jesuit, or member of any order of the Church of Rome bound by monastic or religious vows.

[depressing the power of the Pope:] but being pains of no inconsiderable consequence, it was afterwards thought fit to apply them by other Acts (some of which have been expressly repealed as being obsolete, though others still remain in our statute book) to other heinous offences; of these some bear more and some less relation to the original offence, and some no relation at all.

[Thus, 1. By the statute 1 & 2 Ph. & M. c. 8, to molest the possessors of abbey lands granted by parliament to Henry VIII. and Edward VI., was made a *præmunire*. 2. To obtain any stay of proceedings, (other than by arrest of judgment or writ of error,) in any suit for a monopoly, was likewise made a *præmunire* by statute 21 Jac. I. c. 3. 3. To attempt to restrain the importation or making of gunpowder, was also made a *præmunire* by 16 Car. I. c. 21. 4. On the abolition, by statute 12 Car. II. c. 24, of the prerogative of *purveyance and pre-emption* (*q*),—the exertion of any such power for the future was declared to be indictable; and in any suit thereon, to obtain any stay of proceedings other than by arrest of judgment, or writ of error, was made a *præmunire*. 5. To assert maliciously and advisedly, by speaking or writing, that both or either house of parliament have a legislative authority without the king, was declared a *præmunire* by statute 13 Car. II. c. 1. 6. By the Habeas Corpus Act also, 31 Car. II. c. 2, to send any subject of this realm (with certain exceptions in the Act specified) a prisoner into parts beyond the seas was made a *præmunire*, and one which the king could not pardon; besides being visited with other heavy penalties. 7. By statute 7 & 8 Will. III. c. 24, serjeants, counsellors, proctors, attornies, and all officers of courts practising without having taken the proper oaths were made guilty of a *præmunire*. 8. By the statute 6 Ann. c. 7, to assert maliciously and directly, by preaching, teaching, or advised speaking, that any

(*q*) As to this antient prerogative of the Crown, vide sup. vol. II. p. 537.

[person, other than according to the Acts of Settlement and Union, hath any right to the throne of these kingdoms, or that the king and parliament cannot make laws to limit the descent of the Crown, was declared a *præmunire:* as writing, printing or publishing the same doctrines were made to amount to treason. 9. By statute 6 Ann. c. 23, it was enacted, that if the assembly of peers of Scotland, convened to elect their sixteen representatives in the British parliament, should presume to treat of any other matter save only the election, they should incur the penalties of a *præmunire.* 10. The statute 12 Geo. III. c. 11, subjected to the penalties of the statute of *præmunire,* all such as should knowingly, and wilfully, solemnize, assist, or be present, at any forbidden marriage of such of the descendants of the body of King George the second, as were, by that Act, prohibited to contract matrimony without the consent of the Crown.

Having thus inquired into the nature and several species of *præmunire,* its punishment may be gathered from the foregoing statutes, which are thus shortly summed up by Sir Edward Coke. "That from the conviction the "defendant shall be out of the king's protection, and his "lands and tenements, goods and chattels, forfeited to the "king; and that his body shall remain in prison *at the* "*king's pleasure;* or, as other authorities have it *during* "*life;*" both which amount to the same thing, as the king by his prerogative may any time remit the whole or any part of the punishment; except in the case of transgressing the statute of *habeas corpus* (*r*).

These forfeitures here inflicted, do not bring this offence within our former definition of felony; being inflicted by particular statutes, and not by the common law (*s*). But

(*r*) 1 Inst. 129.

(*s*) It may be noticed that the provision contained in the 33 & 34 Vict. c. 23, taking away the consequence of forfeiture, applies only to a conviction for treason or *felony.* But as the penalties affixed to the offence of *præmunire* are not attempted to be enforced by prosecutions, the point is of no practical importance.

[so odious, Sir Edward Coke adds, was this offence of *præmunire*, that a man that was attainted of the same might have been slain by any other man without danger of law; because it is provided by law that any man might do to him as to the king's enemy, and any man may lawfully kill an enemy (*t*). However, the position itself that it is at all times lawful to kill an enemy is by no means tenable; it being only lawful to kill him in the heat of battle, or for necessary self-defence. And to obviate such savage or mistaken notions the statute 5 Eliz. c. 1, s. 21, provided, that it shall not be lawful to kill any person attainted in a *præmunire;* any law, statute, opinion, or exposition of law, to the contrary notwithstanding (*u*). But still such delinquent, though protected, as a part of the public, from public wrongs, can bring no action for any private injury, how atrocious soever; being so far out of the protection of the law, that it will not guard his civil rights, nor remedy any grievance which he as an individual may suffer. And no man knowing him to be guilty, can with safety give him comfort, aid or relief (*x*).

VII. *Contempts against the sovereign's title,* not amounting to treason or *præmunire,* are chiefly the denial of his right to the Crown, in common and unadvised discourse; for if it be by advisedly speaking, we have seen that it amounts to *præmunire* (*y*). This heedless species of contempt is punishable by our law with fine and imprisonment.]

VIII. *Contempt against the Crown's ecclesiastical supremacy.* This, in our own times, was considered to be committed by endeavouring to establish a hierarchy of the see of Rome within this realm, with titles invasive

(*t*) 1 Inst. 129.

(*u*) The Act in which this declaration of the law is contained, relates chiefly to other subjects, and is among those repealed by 9 & 10 Vict. c. 59.

(*x*) Hawk. P. C. b. 1, c. 19, s. 47.

(*y*) Vide sup. p. 183.

of the rights of our Protestant dignitaries. And by 14 & 15 Vict. c. 60 (the Ecclesiastical Titles Act, 1851), a penalty of 100*l.* was imposed upon any person who should procure from the see of Rome, or publish or put in use within the united kingdom, any bull for constituting archbishops or bishops of pretended provinces or sees; or upon any person, other than the person authorized by law, who should assume or use the title of archbishop, bishop, or dean of any city, town, place, or territory in the united kingdom (*a*). No prosecution under these enactments was ever instituted, although prelates appointed by the Pope have continued to assume, both in England and Ireland, territorial titles; and it has been thought inconvenient to retain them in our statute book. Accordingly they are repealed by the 34 & 35 Vict. c. 53,—the preamble to the Act declaring it to be inexpedient to impose penalties upon those ministers of religion "who may, as among the members of the several religious bodies to which they respectively belong, be designated by distinctions regarded as titles of office, although such designation may be connected with the name of some town or place within the realm." There is, however, a proviso attached to the repeal, that it shall not be deemed in any way to authorize or sanction the conferring of any rank, title, precedence, authority or jurisdiction over any subject of this realm by any person other than by our gracious sovereign.

IX. [*Contempts against the royal palaces* have been always looked upon as high misprisions; and, by the antient law before the Conquest, fighting in the king's palace or before the king's judges was punished with death (*b*). So too, in the old Gothic constitution, there were many places privileged by law—"*quibus major re-*

(*a*) There is a prior enactment to the same general effect (apparently still unrepealed) contained in 10 Geo. 4, c. 7, s. 24.

(*b*) 2 Inst. 140; LL. Alured, cap 7 and 34.

[*verentia et securitas debetur, ut templa et judicia, quæ sancta habebantur, arces et aula regis, denique locus quilibet præsente aut adventante rege*" (*c*).] And with us, by the statute 33 Hen. VIII. c. 12, malicious striking in the king's palace wherein his royal person resides, whereby blood is drawn, was punishable by perpetual imprisonment and fine at the king's pleasure, and also with the loss of the offender's right hand, the solemn execution of which sentence is prescribed in the statute at length (*d*); but by 9 Geo. IV. c. 31, s. 1, the part of this Act which inflicted the above mutilation, is repealed. It appears, however, to be a contempt of the kind now in question to execute the ordinary process of the law, by arrest or otherwise, within the verge of a royal palace, or in the Tower; unless permission be first obtained from the proper authority (*e*).

X. [*The maladministration of such high officers as are in public trust and employment*, may be ranked as a contempt against the sovereign or his government. This is usually punished by the method of parliamentary impeachment; wherein such penalties short of death are inflicted, as to the wisdom of the house of Lords shall seem proper; consisting usually of banishment, imprisonment, fines or perpetual disability. Hitherto also may be referred the offence of *embezzling of public money*, called among the Romans *peculatus;* which the Julian law punished with death in a magistrate, and with deportation or banishment in a private person (*f*). With us it is not a capital crime; but subjects the committer of it, at common law, to a discretionary fine and imprisonment.]

(*c*) Stiernh. de Jure Goth, l. 3, c. 3.

(*d*) See Knevet's case, 11 Harg. St. Tr. 16.

(*e*) See Elderton's case, Ld. Raym. 978; R. *v.* Stobbs, 3 T. R. 735; Winter *v.* Miles, 1 Camp. 475; S. C. 10 East, 578; Sparks *v.* Spink, 7 Taunt. 311; Batson *v.* M'Lean, 2 Chit. Rep. 51; Bell *v.* Jacobs, 1 M. & P. 309; but as to Hampton Court, see Att.-Gen. *v.* Dakin, Law Rep., 2 Ex. 290.

(*f*) Inst. lib. 4, tit. 18, par. 9.

And by statute 50 Geo. III. c. 59, s. 2, it was provided, that if any officer entrusted with the receipt or management of the public revenues, should knowingly furnish false statements or returns of the monies collected by him, or the balances left in his hands, he should be guilty of a misdemeanor; and be fined and imprisoned at the discretion of the court, and for ever rendered incapable of holding any office under the Crown. And special provisions have been made with regard to the *stealing* or *embezzlement* by a person in the service of the Crown, of any chattel, money or valuable security in his possession, or coming under his control, by virtue of such employment (*g*).

XI. To the same class of offences, must be referred that of *selling public offices;* as to which it was provided by 49 Geo. III. c. 126 (reciting and extending the 5 & 6 Edw. VI. c. 16 on the same subject), that persons buying or selling, or receiving or paying money or reward for, any office in the gift of the Crown; and persons receiving or paying money for, or soliciting or obtaining, any such office, or making any negotiation or pretended negotiation relating thereto; and persons opening or advertising houses for transacting business relating to the sale of any such office;—should, respectively, be deemed guilty of a misdemeanor (*h*).

XII. *Offences relating to the coin.*

Offences of this class seem properly classed under the general species of which we are now speaking, by reason of the invasion they usually involve of the prerogative of

(*g*) 24 & 25 Vict. c. 96, ss. 69, 70.

(*h*) As to this statute (from the provisions of which certain offices are excepted) see Hopkins *v.* Prescott, 4 C. B. 578; Sterry *v.* Clifton, 9 C. B. 110; Eyre *v.* Forbes, 12 C. B. (N. S.) 191. See also 6 Geo. 4, cc. 82 and 83, by which the sale of offices in the Queen's Bench and Common Pleas are expressly prohibited.

the crown with regard to the coinage of money, and of which we spoke in a previous division of this work (*i*).

First, then, of offences relating to the coin *of this realm*. These are now comprised in the stat. 24 & 25 Vict. c. 99, (intituled "An Act to consolidate and amend the Statute Law of the United Kingdom against Offences relating to the Coin"); which statute repeals, as far as the united kingdom is concerned (*j*), the 2 & 3 Will. IV. c. 34, by which this subject was previously regulated; and which itself swept away a great variety of enactments relating to the coin, by which our criminal code was previously encumbered. The existing provisions are as follows:—

With respect to gold and silver coin.

1. Whosoever shall falsely make or counterfeit any coin, resembling, or apparently intended to resemble or pass for, any of the queen's current gold or silver coin, shall be guilty of felony (*k*).

2. Whosoever shall gild or silver, (or colour with any wash or materials capable of producing the colour of gold or silver, or by any means whatsoever,) any coin, resembling or intended to pass for any current gold or silver coin; or any piece of silver or copper, or of coarse gold or silver, or of any metal or mixture of metals (of a fit size and figure to be coined),—with intent that the same shall be coined into false coin, resembling, or intended to pass for any current gold or silver coin; or who shall gild, silver, or colour any of the current silver coin or copper coin (or file or alter such silver or copper coin), with intent to make the same resemble or pass for any of the current gold coin or silver coin,—shall, in any of the above cases, be guilty of felony (*l*).

(*i*) Vide sup. vol. II. p. 520.

(*j*) In certain of the *colonies*, however, the 2 & 3 Will. 4, c. 34, remains still in force, its provisions having been, by 16 & 17 Vict. c. 48, extended to those colonies in which local provisions, with respect to offences relating to the coin of this realm, have not been made.

(*k*) 24 & 25 Vict. c. 99, s. 2.

(*l*) Sect. 3. See R. *v.* Turner, 2 M. C. C. R. 42.

3. Whosoever, without lawful authority or excuse, (the proof whereof shall lie on the party accused,) shall buy, sell, receive, pay, or put off any false gold or silver coin, at a lower rate than the same by its denomination imports; or shall import into the united kingdom any such false coin, knowing the same to be counterfeit; he shall, in either case, be guilty of felony (*m*).

4. Whosoever, without lawful authority or excuse, (the proof whereof shall lie on the party accused,) shall knowingly make or mend, or buy or sell, or have in his custody or possession, or shall convey out of the Royal Mints, any coining moulds, machines or tools,—or shall convey out of such Mints any coin, bullion, metal, or mixture of metals,—shall, in any of such cases, be guilty of felony (*n*).

The punishment for any of the offences hitherto mentioned, is penal servitude for life, or for any term not less than five years; or imprisonment for any term not more than two years, with or without hard labour and solitary confinement (*o*).

5. Whosoever shall impair, diminish, or lighten any of the current gold or silver coin, with intent that the coin so altered may pass for the current gold or silver coin, shall be guilty of felony; and is liable to penal servitude for any term not less than five years, nor more than fourteen years, or may be imprisoned as already specified (*p*).

(*m*) 24 & 25 Vict. c. 99, ss. 6, 7. See R. *v.* Joyce, Car. C. L. 184.

(*n*) Sects. 24, 25. See R. *v.* Foster, 7 Car. & P. 495; R. *v.* Bannen, 1 Car. & Kir. 295.

(*o*) Sects. 2, 6, 7, 24, 25; 27 & 28 Vict. c. 47. In the case of any felony under the 24 & 25 Vict. c. 99, the court may, if it shall think fit, bind over the offender with sureties to keep the peace, in addition to any other punishment (sect. 38). Until the passing of 2 Will. 4, c. 34, many offences connected with counterfeiting coin were *capital* felonies; and, in the time of Blackstone, to counterfeit the king's money, or bring false money into the realm, was *treason* (4 Bl. Com. p. 84).

(*p*) 24 & 25 Vict. c. 99, s. 4; 27 & 28 Vict. c. 47.

6. Whosoever shall unlawfully and knowingly have in his custody or possession any filings, clippings, bullion dust or solution, produced or obtained by impairing, diminishing or lightening the current gold or silver coin, shall be guilty of felony, and punished by imprisonment as already specified, or by penal servitude for not less than five nor more than seven years (*q*).

7. Whosoever shall tender, utter or put off any false or counterfeit gold or silver coin, knowing the same to be false or counterfeit, shall be guilty of a misdemeanor; and may be imprisoned for any term not exceeding one year, with or without hard labour and solitary confinement (*r*): and if at the time of such uttering he shall have in his possession any other such counterfeit coin; or shall either on the day of such uttering, or within ten days afterwards, utter any more such false coins (knowing the same to be false);—the imprisonment may be for any term not exceeding two years (*s*): and if any person shall have in his possession three or more pieces of such counterfeit gold or silver coin, knowing the same to be counterfeit, and with intent to utter the same, he may be sentenced to penal servitude for five years, or imprisonment not exceeding two years (*t*). And upon a second conviction for any of these misdemeanors he shall be deemed guilty of felony, and may be punished by penal servitude for life, or not less than five years; though a discretionary power is here also reserved to the court, to

(*q*) 24 & 25 Vict. c. 99, s. 5; 27 & 28 Vict. c. 47.

(*r*) 24 & 25 Vict. c. 99, s. 9. In the case of any indictable misdemeanor under this Act, the court, in addition to, or in lieu of, any other punishment, may fine the offender, and bind him over with sureties to keep the peace and for good behaviour (sect. 38).

(*s*) Sect. 10.

(*t*) Sect. 11. (See 27 & 28 Vict. c. 47.) As to the offence of uttering, &c. counterfeit coin, see R. *v.* Heath, R. & R. C. C. 184; R. *v.* Stewart, ibid. 288; R. *v.* Williams, 1 Car. & M. 259; R. *v.* Hurse, 2 M. & R. 360; R. *v.* Rogers, 2 Moo. C. C. 85; R. *v.* Foster, 1 Dearsley's C. C. R. 456; Jarvis's case, ibid. 552.

substitute imprisonment to the extent and manner already specified (*u*).

8. And whosoever shall, with intent to defraud, tender, utter or put off, as for current gold or silver coin, any coin not being such current coin, or any medal or piece of metal resembling the current coin for which the same shall be tendered, being of less value than the same,—shall be guilty of a misdemeanor, punishable with imprisonment, with or without hard labour and solitary confinement, to the extent of one year (*x*).

With respect to copper coin (*y*).

1. If any person shall falsely make or counterfeit any coin resembling any of the current copper coin; or shall, (without lawful authority or excuse,) make or mend, or begin to make or mend, buy or sell, or have in his custody or possession, any instrument, tool or engine adapted for counterfeiting the current copper coin; or shall buy, receive, pay, or put off any false coin resembling any of the current copper coin, at a lower rate than its denomination imports, or was apparently intended to import;—he shall, in any of these cases, be guilty of felony; and may be sentenced to penal servitude for any term not more than seven nor less than five years, or be imprisoned for any term not more than two years, with or without hard labour and solitary confinement (*z*).

2. Whosoever shall utter or put off any false coin intended to pass for any current copper coin; or shall have in his possession three or more pieces of false copper coin; knowing the same to be counterfeit, and with intent to utter the same,—shall be guilty of a misdemeanor, and may be so imprisoned for any term not exceeding one year (*a*).

(*u*) 24 & 25 Vict. c. 99, s. 12; 27 & 28 Vict. c. 47.

(*x*) 24 & 25 Vict. c. 99, s. 13.

(*y*) These provisions equally apply to the coins now used, composed of *bronze* or *mixed metal*. (See 22 & 23 Vict. c. 30; 24 & 25 Vict. c. 99, s. 1.)

(*z*) 24 & 25 Vict. c. 99, s. 14; 27 & 28 Vict. c. 47.

(*a*) 24 & 25 Vict. c. 99, s. 15.

In addition to the above provisions, it is also enacted, that it shall be a misdemeanor, punishable by imprisonment, with or without hard labour, to the extent of two years, for any person (without lawful authority) to *export* any false or counterfeit coin (*b*); and a misdemeanor so punishable to the extent of one year, for any person to *deface* any of the Queen's current coin by stamping thereon any names or words, whether such coin shall or shall not be thereby diminished or lightened. And it is declared that coin, so defaced or stamped, shall not be a legal tender; and that any person tendering or uttering it, may be summarily convicted before two justices, and fined forty shillings (*c*).

Secondly, of offences relating to the *coin of foreign states.*

Whosoever shall make or counterfeit any kind of coin not the *queen's* current gold or silver, but resembling or apparently intended to resemble or pass for gold or silver coin of any foreign state; or who shall (without lawful authority or excuse) bring into the united kingdom any such false coin, knowing the same to be counterfeit;—shall be guilty of felony: and he may be sentenced to penal servitude for any term not more than seven nor less than five years; or imprisonment, with or without hard labour and solitary confinement, to the extent of two years (*d*). And it is further enacted, that if any person shall tender, utter or put off, any such counterfeit foreign

(*b*) 24 & 25 Vict. c. 99, s. 8.

(*c*) Sects. 16, 17. To melt down the current gold and silver coin of the realm; to receive current gold coin as being of more or less value than was denoted by its denomination; and to import into this country silver coin below the standard weight—were all formerly offences. But the statutes under which such practices were made penal, were repealed by 59 Geo. 3, c. 49, s. 11; 6 Geo. 4, c. 105, s. 141; and 2 Will. 4, c. 34.

(*d*) 24 & 25 Vict. c. 99, ss. 18, 19. (See 27 & 28 Vict. c. 47.) These provisions are in the place of similar ones contained in 37 Geo. 3, c. 126 (repealed by 24 & 25 Vict. c. 95); as to which see R. *v.* Roberts, 1 Dearsley's C. C. 339.

coin, knowing the same to be false, he shall be guilty of a misdemeanor, and may for the first offence be imprisoned to the extent of six months (with or without hard labour); for the second offence be imprisoned for two years (with the addition, if thought fit, of solitary confinement); and for the third offence, shall be deemed guilty of felony, and may be sentenced to penal servitude for life, or not less than five years; or to be imprisoned for not more than two years, with or without hard labour and solitary confinement (*e*).

And whosoever shall counterfeit any foreign coin, intended to resemble any foreign *copper* or other coin made of metals or mixed metals of less value than silver,—shall be guilty of a misdemeanor; and may be imprisoned for the first offence for any time not exceeding one year: and on a second conviction, he is liable to penal servitude for not more than seven nor less than five years; or imprisonment, (with or without hard labour and solitary confinement,) not exceeding two years (*f*). And whosoever shall have in his possession more than five pieces of *any* false foreign coin (without lawful excuse) may be convicted before a justice in the penalty of not more than forty shillings, nor less than ten shillings, for every piece of such false coin so found in his possession; and in default thereof be committed to the house of correction for three months, or till the fine be paid. And all such base money is forfeited and shall be destroyed by the authorities (*g*).

XIII. Offences in relation to the *royal naval or military stores, ships, &c.* Such offences in relation to the royal stores, as amount to larceny or embezzlement, are punishable according to the distinctions already explained with regard to those crimes (*h*). But besides these, there

(*e*) 24 & 25 Vict. c. 99, ss. 20, 21; 27 & 28 Vict. c. 47.

(*f*) 24 & 25 Vict. c. 99, s. 22; 27 & 28 Vict. c. 47.

(*g*) 24 & 25 Vict. c. 99, s. 23.

(*h*) Vide sup. pp. 130, 131.

are others falling under the present head, to repress which various enactments formerly existed, which have been recently consolidated into two statutes (*i*). These are the 30 & 31 Vict. c. 128 (the War Department Stores Act, 1867), and the 32 Vict. c. 12 (the Naval Stores Act, 1869), which, among other provisions for which we must refer the reader to the Acts themselves, enact, 1. That any person, (other than the admiralty, the war department, their contractors, officers or workmen, or other persons with lawful authority,) who shall apply in or on any naval or military stores the *broad arrow*, or any other royal mark,—shall be guilty of a *misdemeanor*, and liable to imprisonment for not more than two years, with or without hard labour (*k*). 2. That any person, who, with intent to conceal her majesty's property in such stores, shall take out, destroy or obliterate any such mark,—shall be guilty of *felony*, and liable to penal servitude for *five* years, or to imprisonment for not more than two years (*l*).

Moreover, by 12 Geo. III. c. 24, to *set on fire, burn or destroy* any of her majesty's ships of war, (whether built, building or repairing,) or any of the arsenals, magazines, dockyards, ropeyards, or victualling offices of the Crown, or materials thereto belonging, or any military, naval or victualling stores or ammunition; or to aid, procure, abet or assist in any of such offences,—is made a felony punishable with *death* (*m*).

XIV. The offence of *serving foreign states* (*n*), which service is generally inconsistent with allegiance to one's natural prince, is now restrained and punishable by the

(*i*) The Naval Stores Act, 1867, was repealed by the 32 Vict. c. 12.

(*k*) 30 & 31 Vict. c. 128, s. 5; 32 Vict. c. 12, s. 4.

(*l*) 30 & 31 Vict. c. 128, s. 6; 32 Vict. c. 12, s. 5.

(*m*) The capital punishment has now been taken away from other descriptions of criminal firing, &c. (vide sup. pp. 101—104.) The provision in the text, however, appears to be still in force.

(*n*) As to receiving a *pension* from a foreign prince, vide post, p. 199.

33 & 34 Vict. c. 90 (the Foreign Enlistment Act, 1870), which provides that if any British subject shall, without the licence of her majesty (*o*), within or without her majesty's dominions, accept any commission in the military or naval service of any foreign state at war with any foreign state at peace with her majesty, or as the Act expresses it, "with any friendly state,"—or shall induce any other person so to do—or shall quit or attempt to quit her majesty's dominions with intent of accepting such commission;—he shall, in any of the above cases, be punishable by fine or imprisonment, to the extent of two years, or both (*p*). And further, that if any person within her majesty's dominions, (without licence from the Crown first obtained,) shall build or equip any ship for the service of any foreign state at war with a friendly state, or shall issue any commission for any such ship, or shall increase the number of her guns or equipment for war, or shall be concerned in augmenting her warlike force;—such offender shall also be guilty of a misdemeanor, and may be punished in the same manner (*q*).

Moreover, by the same Act, any ship violating the provisions thereof may be *detained*, either by the local authority, as defined therein, or by the order of the secretary of state, or the chief executive authority (*r*).

XV. The offences of *desertion* or *seducing to desert*, from the army or navy (*s*).

(*o*) A licence for this purpose may either be under the royal sign manual, or by order in council, or by proclamation. (33 & 34 Vict. c. 90, s. 15.)

(*p*) Sect. 18. The imprisonment may be either with or without hard labour. (Sects. 4, 5, 6.)

(*q*) As to these enactments of our municipal law (of which only the more important are referred to in the text) in reference to the law of nations on the same subject, vide post, p. 216. The statute of 33 & 34 Vict. c. 90, is in substitution of an Act on the same subject (59 Geo. 3, c. 69). There was a still earlier one (3 Jac. 1, c. 4), the penalties of which were repealed by 9 & 10 Vict. c. 59.

(*r*) 33 & 34 Vict. c. 90, ss. 21—23.

(*s*) As to seamen or apprentices deserting from the *merchant service*, see 17 & 18 Vict. c. 104, s. 243.

These offences are now mainly provided against by the annual Mutiny Acts, and by the Naval Discipline Act, 1866 (*t*); by which (when committed by persons subject to those Acts) they are placed under the jurisdiction of courts-martial, and punished with such punishment as those courts shall inflict (*u*).

In addition, however, to these there is a statute 37 Geo. III. c. 70 (*x*), which enacts that any person maliciously endeavouring to seduce any person, serving in the Royal forces by sea or land, from their allegiance; or stirring up any such persons to mutiny or to any traitorous or mutinous practice;—shall be guilty of felony. Under this Act he was made punishable with *death;* but by the effect of later statutes, he is now liable, if convicted under its provisions, to penal servitude for life, or any term not less than five years; or to be imprisoned, with or without hard labour or solitary confinement, for any term not more than two years (*y*).

XVI. Another class of offences ranging itself under the present head, is that of administering *unlawful oaths;* or of being engaged in *illegal societies.*

It is enacted by 37 Geo. III. c. 123, that whoever shall administer or cause to be administered, or shall be present at and consenting to the administering of,—or shall himself take,—any *oath or engagement* intended to bind any person in any mutinous or seditious purpose; or to bind him to belong to any seditious society or confederacy; or to obey any committee, or any person not having legal authority for that purpose; or not to give evidence against any confederate or other person; or not to discover any "unlawful combination" or illegal act, or illegal oath or

(*t*) 29 & 30 Vict. c. 109.

(*u*) Vide sup. vol. II. pp. 590, 596, n.

(*x*) Made perpetual by 57 Geo. 3, c. 7. A statute on this subject, 1 Geo. 1, c. 47, is repealed by 30 & 31 Vict. c. 59.

(*y*) 7 Will. 4 & 1 Vict. c. 91; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

engagement,—shall be guilty of felony; and he may be sentenced to penal servitude for not more than seven nor less than five years (*z*).

And further, that to have taken such oath or engagement under *compulsion* shall be no excuse, unless the person compelled shall within four days after he has an opportunity, disclose the whole of the case to a justice of the peace; or, in the case of a soldier or seaman, to his commanding officer.

Moreover, by 39 Geo. III. c. 79; 52 Geo. III. c. 104; 57 Geo. III. c. 19; and 2 & 3 Vict. c. 12;—all societies are to be deemed *unlawful combinations* of which the members shall take such oaths or engagements as are expressly prohibited by 37 Geo. III. c. 123, or are not required by law, or of which the members shall subscribe any unauthorized test or declaration; as well as all societies which shall comprise members whose names shall be unknown to the society at large, and societies consisting of different branches, which shall elect committees or delegates to communicate with other societies: and persons becoming members of such unlawful combinations, or aiding, abetting, or supporting the same, may be either proceeded against by way of summary conviction before justices, or they may be prosecuted by indictment,—in which case they may be sentenced to penal servitude for not more than seven nor less than five years, or imprisoned for any time not exceeding two years (*a*). On the other hand, regular lodges of Freemasons, societies duly established under the statutes in force relating to friendly societies, meetings of Quakers, and meetings of a religious or charitable nature only, do not come within the prohibiting enactments of the Acts; and such of their provisions as relate to *oaths and engagements* do not

(*z*) 37 Geo. 3, c. 123, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*a*) See 39 Geo. 3, c. 79; 52 Geo. 3, c. 104; 57 Geo. 3, c. 19; 2 & 3 Vict. c. 12; 9 & 10 Vict. c. 33; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

extend to any form of declaration approved by two justices, and registered as in the Acts provided.

By one of the above Acts, viz. by 52 Geo. III. c. 104, it is also provided that every person who shall administer or cause to be administered, or be aiding or assisting in the administration of, any oath or engagement intending to bind the party sworn to the commission of any *treason*, *murder* or *capital felony*,—shall be guilty of felony; and he may be sentenced to penal servitude for life, or for not less than five years, or be imprisoned, with or without hard labour and solitary confinement, for any term not more than two years (*b*). And it is further enacted, that every person taking such oath or engagement, (not being compelled,) shall also be guilty of felony, and liable to penal servitude for life, or such time as the court may direct; and that compulsion shall be no excuse, unless the party compelled makes discovery of the case within fourteen days (*c*).

XVII. [We shall conclude the chapter with a notice of certain *miscellaneous contempts* against the royal prerogative, not properly falling under any of the preceding heads. Such as, 1. Concealing treasure trove, which, (as we have elsewhere explained,) belongs to the sovereign or his grantees by prerogative royal (*d*); and the concealment of which was formerly punishable by death (*e*), but now only by fine and imprisonment (*f*). 2. Preferring the interests of a foreign potentate to those of our own, or doing or receiving anything that may create an undue influence in favour of such extrinsic power; as by taking a pension from any foreign prince without the consent of the Crown (*g*). 3. Disobeying the sovereign's lawful

(*b*) 52 Geo. 3, c. 104; 7 Will. 4 & 1 Vict. c. 91; 9 & 10 Vict. c. 24, s. 1; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 26 & 27 Vict. c. 47.

(*c*) 52 Geo. 3, c. 104, ss. 1, 2.

(*d*) Vide sup. vol. II. p. 546.

(*e*) Glanv. l. 1, c. 2.

(*f*) 3 Inst. 133.

(*g*) Ibid. 144.

[command;—whether by writs issuing out of his courts of justice; or by a summons to attend his privy council; or by letter from him to a subject, commanding him to return from beyond the seas, (for disobedience to which, his lands shall be seized till he does return, and himself afterwards punished). 4. Disobedience to any Act of Parliament, where no particular penalty is assigned. All these are given in the books as instances of misprisions and contempts; the general punishment whereof are fine and imprisonment, at the discretion of the courts of justice (*h*).]

(*h*) Hawk. P. C. b. 1, c. 22, s. 5.

CHAPTER VII.

OF OFFENCES AGAINST RELIGION.

It was laid down at the outset of this work that *rights* are liberties secured to the individual by the compact of civil society (*a*); and at the beginning of our present division we defined *crimes* as the violation of rights when considered in a particular point of view, viz. in reference to the evil effect of such violation as regards the community at large (*b*). It follows from this, that crimes, in contemplation of law, essentially consist in the breach of human institutions; and therefore, though the offences in this and the following chapter are enumerated as offences against religion, yet in a treatise of municipal law, we must consider them as deriving their particular guilt from the law of man.

Of those offences against religion of which cognizance is thus taken by human tribunals, the first is that of—

I. [*Apostasy*, or a total renunciation of Christianity, by embracing either a false religion or no religion at all. This offence can only take place, in such as have once professed the true religion. The perversion of a Christian to judaism, paganism, or other false religion, was punished by the Emperors Constantius and Julian with confiscation of goods (*c*); to which the Emperors Theodosius and Valentinian added capital punishment, in case the apostate endeavoured to pervert others to the same iniquity (*d*):

(*a*) Vide sup. vol. I. p. 29.
(*b*) Vide sup. p. 1.
(*c*) Cod. l. 7, 1.
(*d*) Cod. 6.

[a punishment too severe for any temporal laws to inflict upon any spiritual offence: and yet the zeal of our ancestors imported it into this country; for we find by Bracton, that in his time apostates were to be burnt to death (*e*). Doubtless the preservation of Christianity, as a national religion, is, abstracted from its own intrinsic truth, of the utmost consequence to the state; and therefore all endeavours to depreciate its efficacy in those who have once professed it, are highly deserving of censure. But yet the loss of life is a heavier penalty than the offence, taken in a civil light, deserves; and taken in a spiritual light, our laws have no jurisdiction over it. This punishment, therefore, has long ago become obsolete; and the offence of apostasy was for a long time the object only of the ecclesiastical courts, which corrected the offender *pro salute animæ*. But about the close of the sixteenth century the civil liberties to which we were then restored, being used as a cloak of maliciousness; and the most horrid doctrines, subversive of all religion, being publicly avowed, both in discourse and writings, it was thought necessary again for the civil power to interpose, by not admitting those *miscreants* to the privileges of society, who maintained such principles as destroyed all moral obligation (*f*).] To this end it was enacted by stat. 9 & 10 Will. III. c. 35, that if any person educated in, or having made profession of, the Christian religion, shall by writing, printing, teaching, or advised speaking, assert or maintain there are more Gods than one, or shall deny the Christian religion to be true (*g*), or the Holy Scripture of the Old and New Testament to be of divine authority, he shall upon the first offence be rendered incapable to

(*e*) L. 3, c. 9.

(*f*) *Mescroyantz* in our antient law books is the name of unbelievers.

(*g*) The Act (in some editions of the statutes printed cap. 32) adds to these offences, that of denying "any one of the persons in the Holy Trinity to be God," but it was repealed *quoad hoc*, by 53 Geo. 3, c. 160. (See Rex *v.* Waddington, 1 Barn. & Cres. 26.)

hold any ecclesiastical, civil or military office or employment, and for the second, be rendered incapable of bringing any action, (or to be guardian, executor, legatee, or grantee,) and shall suffer three years' imprisonment without bail. To give room, however, for repentance;—if, within four months after the first conviction, the delinquent will in the court in which he was convicted and within four months from the trial renounce his error, he is discharged for that once from all diasabilities.

II. A second offence is that of *heresy;* which consists not in a total denial of Christianity, but of some of its principal doctrines, publicly and obstinately avowed (*h*).

[Heresy was described among the canonists, in vague and general terms, as consisting of any deviation from the true Catholic faith, as understood by Holy Mother Church (*i*),—very contrary to the usage of the first general councils, which defined all heretical doctrines with the utmost precision and exactness (*j*); and spoke of heretics by name as in the case of the Manichæans, Nestorians, and others (*k*). The cognizance of heresy has always been held in every country, where the canon law has prevailed, to belong to the ecclesiastical judge (*l*); and the canonists have ever treated it with great severity. On the continent, they prevailed upon the weakness of bigoted princes to make the civil power subservient to their purposes, by making heresy not only a temporal, but even a capital offence: the Romish ecclesiastics determining without appeal whatever they pleased to be heresy; and shifting off to the secular arm the odium and drudgery of executions, with which they themselves were too tender and delicate to intermeddle. Nay, they pretended to

(*h*) 1 Hale, P. C. 384.

(*i*) "*Hæreticus, qui de articulis fidei aliter prædicat, sentit, vel docet, quàm docet sancta mater ecclesia.*"—See 1 Hale, P. C. 383.

(*j*) 4 Bl. Com. p. 45.

(*k*) See Hale, ubi sup.

(*l*) Year Book, 27 Hen. 8, 14 b; stat. 2 Hen. 4, c. 15; 1 Hale, P. C. 384; Bl. Com., ubi sup.

[intercede and pray on behalf of the convicted heretic, *ut citra mortis periculum, sententia circa eum moderetur* (*m*). well knowing at the same time that they were delivering the unhappy victim to certain death. Hence the capital punishments inflicted on the ancient Donatists and Manichæans, by the Emperors Theodosius and Justinian (*n*): hence also the constitution of the Emperor Frederic, mentioned by Lyndewode (*o*): adjudging all persons without distinction to be burned by fire, who were convicted of heresy by the ecclesiastical judge. The same emperor, in another constitution, ordained that if any temporal lord, when admonished by the Church, should neglect to clear his territories of heretics within a year, it should be lawful for good Catholics to seize and occupy the lands, and utterly to exterminate the heretical possessors (*p*). And upon this foundation was built that arbitrary power, so long claimed and so fatally exerted by the Pope, of disposing even of the kingdoms of refractory princes, to more dutiful sons of the Church. The immediate event of this constitution was somewhat singular, and may serve to illustrate at once the gratitude of the holy see and the just punishment of the royal bigot,—for upon the authority of this very constitution the Pope afterwards expelled this very Emperor Frederic from his kingdom of Sicily, and gave it to Charles Anjou (*q*).

Christianity being thus deformed by the demon of persecution upon the continent, we cannot expect that our own island should have been entirely free from the same scourge.] And accordingly we not only find that our ecclesiastical courts were always in the habit of proceeding against heretics by spiritual punishments, such as penance, excommunication and the like; but we also discover among our antient precedents a writ *de hæretico comburendo*, which is thought by some to be as an-

(*m*) Greg. Decret. lib. 5, t. 40, c. 27.
(*n*) Cod. l. i. tit. 5.
(*o*) C. de Hæreticis.
(*p*) Cod. 1, 5, 4.
(*q*) Baldus in Cod. 1, 5, 4.

tient as the common law itself(*r*). However, it appears that it was not the practice to issue this writ except upon a conviction for contumacy or relapse; nor unless such conviction took place before the archbishop himself in a provincial synod or convocation. And even that authority could not lawfully award the writ, but merely left the delinquent to the secular power: so that the crown might pardon him, if it thought proper, by forbearing to issue the writ; which was not grantable as of course, but issued by the special direction of the sovereign(*s*). [But in the reign of Henry the fourth, when the eyes of the Christian world began to open, and the seeds of the Protestant religion—though under the opprobrious name of Lollardy(*t*)—took root in this kingdom, the clergy, taking advantage, from the king's dubious title, to demand an increase of their own power, obtained an act of parliament (2 Hen. IV. c. 15), which sharpened the edge of persecution to its utmost keenness(*u*). For by that statute the diocesan alone, without the intervention of a synod, might convict of heretical tenets; and unless the convict abjured his opinions, or if, after abjuration, he

(*r*) 1 Hale, P. C. 392; 1 Hawk. b. 1, c. 2, s. 10; and see St. Tr. vol. ii. 275. It seems clear, however, that, at common law, heresy was not punishable by forfeiture of lands or goods. 1 Hale, P. C. 388 (n).

(*s*) 1 Hale, P. C. 385, 393, 395. According to some opinions, the writ *de hæretico comburendo* was, at common law, not only in *practice* confined to convictions before the archbishop in provincial synod, but could not *legally* be awarded on a conviction before any court of inferior authority, such as that of the diocesan. See 1 Hale, P. C. 391; 12 Rep. 56, 57.

(*t*) So called not from *lolium* or tares (an etymology which was afterwards devised in order to justify the burning of them, see Matth. xiii. 30), but from one Walter Lolhard, a German reformer, A.D. 1315 (Mod. Un. Hist. xxvi. 13; Spelm. Gloss. 371); or, as some hold, from *Lollen*, to sing, in reference to their psalm-singing. (D'Aubigné, Hist. of Reformation, vol. v. p. 180.)

(*u*) A previous Act (5 Ric. 2, st. 2, c. 5,) had been aimed at the followers of Wickliffe, but the people would not assent to it, and it was revoked the following year. (See Hist. Eng. L. by Reeves, vol. iii. p. 163.)

[relapsed, the sheriff was bound, *ex officio*, if required by the bishop, to commit the unhappy victim to the flames, without waiting for the consent of the crown. And again, by the stat. 2 Hen. V. c. 7, Lollardism was also made a temporal offence, and indictable in the king's courts; which did not however thereby gain an exclusive but only a concurrent jurisdiction with the bishop's consistory.

Afterwards, as the reformation of religion advanced, the power of the ecclesiastics became somewhat moderated; for though in what heresy consisted was still not precisely defined, yet the legislature explained in some points what is was *not*. For the statute 25 Hen. VIII. c. 14, declared that offences against the see of Rome were not heretical; and restrained the ordinary from proceeding in any case of alleged heresy upon mere suspicion,—that is, unless the party was accused by two credible witnesses, or an indictment for the offence was first found in the king's courts of common law. And yet the spirit of persecution was not then abated, but only diverted into a lay channel. For in six years afterwards, by statute 31 Hen. VIII. c. 14, the bloody law of the Six Articles was made; which established the six most contested points of popery—transubstantiation—communion in one kind—the celibacy of the clergy—monastic vows—the sacrifice of the mass—and auricular confession; which points were "determined and resolved by the "most godly study, pain and travail of his majesty; for "which his most humble and obedient subjects, the lords "spiritual and temporal, and the commons, in parliament "assembled, did not only render and give unto his high-"ness their most high and hearty thanks," but did also enact and declare all oppugners of the first to be heretics, and to be burned with fire,—and of the five last, to be felons, and to suffer death. The same statute established a new and mixed jurisdiction of clergy and laity for the trial and conviction of heretics; the reigning prince being then equally intent on destroying the supre-

[macy of the bishops of Rome, and establishing all other their corruptions of the Christian religion.

We shall not enter into the various repeals and revivals of these sanguinary laws in the two succeeding reigns; but shall proceed directly to the reign of Queen Elizabeth, when the Reformation was established on a firm and permanent basis. By stat. 1 Eliz. c. 1, all former statutes relating to heresy were repealed, which left the jurisdiction of heresy as it stood at common law; that is, left the simple offence to be visited by spiritual punishments in the ecclesiastical courts; and the offence, when aggravated by contumacy or relapse, to be dealt with by the writ *de hæretico comburendo*, after a conviction in the provincial synod. But the principal point then gained was, that by this statute a boundary was for the first time set to what would be accounted heresy; that is to say, such tenets only as had been theretofore so declared, 1, by the words of the Canonical Scriptures, or 2, by the first four general councils, or such others as had only used the words of the Holy Scriptures: or which should thereafter be declared heresy by the parliament, with the assent of the clergy in convocation.

The writ, however, *de hæretico comburendo* still remained in force; and we have instances of its being put in execution upon two Anabaptists in the seventeenth year of Elizabeth, and upon two Arians in the ninth year of James the first. But that writ was totally abolished, and heresy at length again subjected only to ecclesiastical correction *pro salute animæ*, by virtue of the statute 29 Car. II. c. 9.

III. Another species of offences against God and religion, is that of *blasphemy* against the Almighty by denying His being or providence; or by contumelious reproaches of our Lord and Saviour Christ: whither, also, may be referred all profane scoffing at the Holy Scripture, or exposing it to contempt and ridicule. These

[are offences punishable at common law by fine and imprisonment, or other infamous corporal punishment (*z*). For Christianity is part of the laws of England; and a blasphemous libel may be prosecuted as an offence at common law, and punished with fine and imprisonment (*a*).]

IV. A fourth species of offences against religion are those which affect the Established Church. And these have been said to be either positive or negative: positive, by reviling its ordinances; or negative, by non-conformity to its worship (*b*). But we shall confine our remarks to the former class: the latter being in effect abolished by the gradual extension of the principle of religious toleration; the history of which has been already traced in that part of this work where we had occasion to consider the Church and its worship (*c*).

As to the offence of *reviling the ordinances of the Church*. [This is a crime which carries with it the utmost indecency, arrogance, and ingratitude; indecency by setting up private judgment in virulent and factious opposition to public authority; arrogance, by treating with contempt and rudeness, what has at least a better chance to be right than the singular notions of any particular man; and ingratitude, by denying that indulgence and undisturbed liberty of conscience to the members of the national Church, which the retainers to every petty conventicle enjoy.] And, accordingly, it was provided by statute 1 Edw. VI. c. 1, and 1 Eliz. c. 1, that whoever reviled the sacrament of the Lord's Supper should be punished

(*z*) Hawk. P. C. b. 1, c. 5, s. 5.

(*a*) Hawk. ubi sup.; 1 Vent. 293; R. *v.* Woolston, Str. 834; R. *v.* Carlisle, 3 B. & Ald. 161. In the thirty-fourth year of Henry the sixth, Chief Justice Prisot declared in the Court of Common Pleas,—"*Scripture est common ley, sur quel touts manieres de leis sont fondés.*" (See the Year Book, 34 Hen. 6, 40.) And that Christianity is part of the law of England, is again judicially asserted in the judgment of Chief Baron Kelly, in the recent case of Cowan *v.* Milbourn, Law Rep., 2 Exch. 230.

(*b*) 4 Bl. Com. p. 50.

(*c*) Vide sup. vol. II. p. 702.

by fine and imprisonment. And by the statute 1 Eliz. c. 2, that if any *ordained minister* should speak any thing in derogation of the Book of Common Prayer, he should, if not beneficed, be imprisoned one year for the first offence, and for life for the second: and, if beneficed, he should for the first offence be imprisoned six months, and forfeit a year's value of his benefice; for the second offence be deprived, and suffer one year's imprisonment; and, for the third, be deprived, and suffer imprisonment for life. The same Act provided also, that if *any* person should in plays, songs, or other open words, speak any thing in derogation, depraving or despising of the said book of prayer, or forcibly prevent the reading of it, or cause any other service to be used in its stead,—he should forfeit, for the first offence, a hundred marks; for the second, four hundred: and, for the third, all his goods and chattels, and suffer imprisonment for life. Nor can the milder penalties, at least, provided by these enactments be thought too severe and intolerant; so far as they were levelled at the offence, not of *thinking* differently from the national Church, but of *railing* at that Church and *obstructing* its ordinances. For though it is clear that no restraint should be laid upon rational and dispassionate discussions of the rectitude and propriety of the established mode of worship, yet contumely and contempt are what no establishment can tolerate (*d*).

V. [Another offence against God and religion is that of profane and common *swearing* and *cursing*. And by 19 Geo. II. c. 21, which repealed all former statutes on this subject, every labourer, sailor, or soldier profanely cursing or swearing, shall forfeit one shilling (*e*); every

(*d*) See also the provisions contained in 9 & 10 Will. 3, c. 32, sup. p. 202.

(*e*) It also forms one of the articles of war contained in the Naval Discipline Act, 1866, that any person subject to that Act, who shall be guilty of profane swearing, shall be dismissed her majesty's service with disgrace, or suffer such lesser punishment as by that Act authorized (29 & 30 Vict. c. 109, s. 27).

[other person, under the degree of a gentleman, two shillings; and every gentleman or person of superior rank, five shillings; to the poor of the parish wherein such offence was committed (*f*). And, on a second conviction, shall forfeit double, and for every subsequent offence, treble, the sum first forfeited, with all charges of conviction; and, in default of payment, shall be sent to the house of correction for ten days. Any justice of the peace may convict upon his own hearing or the testimony of one witness. And any constable or peace officer, upon his own hearing, may secure any offender and carry him before a justice, and there convict him; but the conviction must be within eight days after the committal of the offence. If the justice omits his duty, he forfeits five pounds, and the constable forty shillings.]

VI. Another offence of the description under consideration, is that of *using pretended witchcraft, conjuration, enchantment, and sorcery.* Our law once included in the list of crimes, that of *actual* witchcraft or intercourse with evil spirits: and though it has now no longer a place among them, its exclusion is not to be understood as implying a denial of the possibility of such an offence. [To deny this, would be to contradict the revealed word of God in various passages both of the Old and New Testament; and the thing itself is a truth to which every nation in the world hath in its turn borne testimony; either by examples seemingly well attested, or by prohibitory laws, which at least suppose the possibility of a commerce with evil spirits. Wherefore it seems to be the most eligible way to conclude, with an ingenious writer, that in general there has been such a thing as witchcraft, though one cannot give credit to any particular modern instance of it (*g*).

Our forefathers were stronger believers when they

(*f*) See a modern conviction under this enactment, The Queen *v.* Scott, 4 B. & Smith, 368.

(*g*) Mr. Addison, Spect. No. 117.

[enacted, by statute 33 Henry VIII. c. 8, all witchcraft and sorcery to be felony without benefit of clergy. And again by statute 1 Jac. I. c. 12, that all persons invoking any evil spirit; or consulting, covenanting with, entertaining, employing, feeding or rewarding any evil spirit; or taking up dead bodies from their graves to be used in any witchcraft, sorcery, charm or enchantment; or killing or otherwise hurting any person by such infernal arts;—should be guilty of felony and suffer death: and that if any person should attempt, by sorcery, to discover hidden treasure, or to restore stolen goods, or to provoke unlawful love, or to hurt any man or beast, (though the same were not effected,) he, or she, should suffer imprisonment and pillory for the first offence, and death for the second. These Acts long continued in force, to the terror of all antient females in the kingdom: and many poor wretches were sacrificed thereby to the prejudice of their neighbours and their own illusions; not a few having, by some means or other, confessed the fact at the gallows. But all executions for this dubious crime are now at an end: our legislature having at length followed the wise example of Louis the fourteenth in France; who thought proper by an edict to restrain the tribunals of justice from receiving informations of witchcraft (*h*). And accordingly it was enacted, by 9 Geo. II. c. 5, that no prosecution should for the future be carried on against any person for witchcraft, sorcery, enchantment, or conjuration; or for charging another with any such offence (*i*).] But, by the same statute, persons pretending to use witchcraft, tell fortunes, or discover stolen goods by skill in any occult or crafty science—were made punishable by imprisonment: and by 5 Geo. IV. c. 83, s. 4, persons

(*h*) Voltaire, Siècl. Louis 14, c. 29; Mod. Un. Hist. xxv. 215.

(*i*) This Act is said to have passed, in consequence of an old woman being drowned at Tring, in Hertfordshire, by her too credulous neighbours, who suspected her of witchcraft. — (Christian's Blackstone.)

using any subtle craft, means, or device, by palmistry or otherwise, to deceive his majesty's subjects,—are to be deemed *rogues* and *vagabonds;* and to be punished with imprisonment and hard labour (*k*).

VII. [A seventh species of offenders in this class, are all *religious impostors;* such as falsely pretend an extraordinary commission from heaven; or terrify and abuse the people with false denunciations of judgments. These, as tending to subvert all religion, by bringing it into ridicule and contempt, are punishable by the temporal courts with fine, imprisonment, and infamous corporal punishment (*l*).]

VIII. *Simony* may also be considered as an offence against religion, by reason of the sacredness of the charge which is thereby profanely bought and sold. Its nature and the penalties to which it is subject having been already described, when we treated of the endowments and provisions of the Church (*m*), it will be unnecessary to recur to them in this place, and we shall pass on to consider—

IX. [*Profanation of the Lord's Day,* (commonly, but improperly, called *sabbath breaking,*) which is another offence of the class now in question. It is unquestionable that the keeping one day in seven holy, as a time of relaxation and refreshment, as well as for public worship, is of admirable service to a state, considered merely as a civil institution. It humanizes, by the help of conversation and society, the manners of the lower classes; which would otherwise degenerate into a sordid ferocity, and savage selfishness of spirit. It enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness; and it im-

(*k*) As to *rogues and vagabonds,* vide post, chap. XII.

(*l*) Hawk. P. C. b. 1, c. 5, s. 3.

(*m*) Vide vol. II. pp. 719—722.

[prints on the minds of the people that sense of their duty to God so necessary to make them good citizens, but which yet would be worn out and effaced by an unremitted continuance of labour without any stated times of recalling them to the worship of their Maker. Accordingly, the laws of King Athelstan forbade all merchandizing on the Lord's day, under very severe penalties (*n*); and by the statute 27 Henry VI. c. 5, no fair or market shall be held on Good Fridays or on any Sunday, except the four Sundays in harvest or for necessary victual, on pain of forfeiting the goods exposed to sale (*o*). Again, by statute 1 Car. I. c. 1, no persons shall assemble, out of their own parishes, for any sport whatever upon this day; nor in their parishes shall use any bull, or bear, baiting, interludes, plays, or other *unlawful* exercises or pastimes,—on pain that every offender shall pay three shillings and fourpence to the poor.] Also, by statute 29 Car. II. c. 7, no tradesman, artificer, workman, labourer, or other person whatever, is allowed to do any work of their ordinary calling upon the Lord's day,—works of necessity and charity only excepted,—on pain that every person, of fourteen years, so offending, shall forfeit five shillings. And, by the same Act, no person shall publicly expose to sale any wares whatever upon the Lord's day, upon pain of forfeiting the goods; nor any drover, or the like, travel or come into his inn or lodging, upon pain of forfeiting twenty shillings; nor any person serve or execute any process, (except for treason, felony or breach of the peace): and such service or execution, if made, shall be void to all intents and purposes whatever (*p*). Moreover, by

(*n*) C. 24.

(*o*) The exception as to Sundays in harvest time is repealed by 13 & 14 Vict. c. 23.

(*p*) By the 34 & 35 Vict. c. 87 (continued by the 36 & 37 Vict. c. 75, to 1st Sept. 1874, and the end of the then next session), no prosecution under this statute of Car. 2 is to be instituted unless by the written consent of the chief officer of police, or of two justices, or a stipendiary magistrate. There are also enactments with the same ob-

21 Geo. III. c. 49, any house which shall be used for public entertainment or public debate on the Lord's day, and to which persons shall be admitted by the payment of money, shall be deemed a *disorderly house:* and subject to the punishment which the law provides in the case of houses of that description (*q*). And, lastly, there are enactments prohibiting under a penalty the sale of intoxicating liquors in public-houses and other licensed premises within certain hours, on any Sunday, Christmas-day, or Good Friday, unless to a lodger in the house, or to a *bonâ fide* traveller (*r*).

ject of securing the proper observance of Sunday, which refer to *carriers* (3 Car. 1, c. 1); to *fish-carriages* (2 Geo. 3, c. 15); to *bakers* (34 Geo. 3, c. 61; 50 Geo. 3, c. 73, s. 3; 1 & 2 Geo. 4, c. 50, s. 11; 3 Geo. 4, c. cxvi. s. 16); to *watermen* (11 & 12 Will. 3, c. 24, s. 13; 7 & 8 Geo. 4, c. lxxv.); to *killing game* (1 & 2 Will. 4, c. 32, s. 3). And see, as to the construction of statute 29 Car. 2, c. 7, Sandiman *v.* Breach, 7 Barn. & Cress. 96; R. *v.* Whitnash, ibid. 596; Peate *v.* Dicken, 5 Tyr. 116; Scarfe *v.* Morgan, 1 H. & H. 292; Beaumont *v.* Brengeri, 5 C. B. 301.

(*q*) As to disorderly houses, vide post, c. XII. As to the construction of this enactment in reference to the holding of religious services, the admission to which is by money, see Baxter *v.* Langley, Law Rep., 4 C. P. 21.

(*r*) See 35 & 36 Vict. c. 94, s. 24, et sup. vol. III. p. 199.

CHAPTER VIII.

OF OFFENCES AGAINST THE LAW OF NATIONS.

[ACCORDING to the method marked out in the preceding chapter, we are next to consider the offences more immediately repugnant to that universal law of society, which regulates the mutual intercourse between one state and another: those, at least, which are particularly animadverted on, as such, by the English law.

The law of nations, to which we have before had occasion briefly to advert (*a*), is a system of rules, established by universal consent, among the civilized inhabitants of the world (*b*); in order to decide all disputes, to regulate all ceremonies and civilities, and to ensure the observance of justice and good faith, in that intercourse which must frequently occur between two or more independent States, and the individuals belonging to each: being founded upon this general principle, that different nations ought, in time of peace, to do to one another all the good they can: and in time of war, as little harm as possible, without prejudice to their own real interests. And as none of these States will allow a superiority in the other, therefore neither can dictate or prescribe the rules of this law to the rest; but such rules must necessarily result from those principles of natural justice, in which all the learned of every nation agree, and to which all civilized States have assented.

In arbitrary States this law, whenever it contradicts or is not provided for by the municipal law of the country,

(*a*) Vide sup. vol. I. p. 24. (*b*) Sp. L. b. 1, c. 7.

[is enforced by the royal power; but, since in England no royal power can introduce a new law, or suspend the execution of the old, therefore the law of nations, whenever any question arises which is properly the object of its jurisdiction, is here adopted in its full extent by the common law, and held to be the law of the land. Hence those Acts of Parliament, which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the kingdom, without which it must cease to be a part of the civilized world. But though in civil transactions, and questions of property, between the subjects of different States, the law of nations has much scope and extent, as adopted by the law of England; yet the present branch of our inquiries will fall within a narrow compass, as offences against the law of nations can rarely be the object of the criminal law of any particular State. For offences against this law are principally incident to whole States or nations; in which case recourse can only be had to war, which is an appeal to the God of hosts, to punish such infractions of public faith as are committed by one independent people against another; neither State having any superior jurisdiction to resort to upon earth for justice. But where the individuals of any State violate this general law, it is then the interest, as well as duty, of the government under which they live, to animadvert upon them with a becoming severity, that the peace of the world may be maintained. For in vain would nations, in their collective capacity, observe these universal rules, if private subjects were at liberty to break them at their own discretion, and involve the two States in a war. It is, therefore, incumbent upon the nation injured, first to demand satisfaction and justice to be done on the offender, by the State to which he belongs; and if that be refused or neglected, the sovereign then avows himself an accom-

[plice or abettor of his subject's crime, and draws upon his community the calamities of foreign war (*c*).]

The principal cases in which the statute law of England interposes to aid and enforce the law of nations, as a part of the common law, by inflicting an adequate punishment upon offences against that universal law committed by private persons, are in respect of offences of three kinds: I. Violation of safe-conducts; II. Infringement of the rights of ambassadors; and, III. Piracy.

I. [As to the first, *violation* of the *safe-conducts* or *passports*, expressly granted by the sovereign or his ambassadors, to the subjects of a foreign power, in time of mutual war; or the committing acts of hostility against such as are in amity, league, or truce with us, who are, in this case, under a general implied safe-conduct;—these are breaches of the public faith, without the preservation of which, there can be no intercourse or commerce between one nation and another. And as during the continuance of any safe-conduct, either express or implied, the foreigner is under the protection of the king and the law; and more especially as it is one of the articles of *Magna Charta*, that foreign merchants should be entitled

(*c*) It has not been thought convenient to disturb the general statement on this subject which is given in the text as originally laid down by Blackstone. But it may be worth notice here, that since his time attempts have more than once been made by international arrangements to refer such disputes, as are of a nature to admit of amicable settlement, to peaceful arbitration, in place of an appeal to war. Thus, in the year 1861, certain vessels, afterwards used against the United States by the Confederates of the South, having been built and equipped in this country, and allowed to escape from our ports, it was insisted by the United States that, not having used due diligence in the matter, we were liable for the damages they had sustained by the depredations of these ships. This question was by treaty referred to the arbitrament of certain of the European powers, and it was by them decided, at a sitting held at Geneva in the year 1872, that we were responsible for such damages to the extent of about three millions sterling.

[to safe-conduct and security throughout the kingdom (*d*); —there is no question but that any violation of either the person or property of such foreigner may be punished by indictment in the name of the sovereign; whose honour is more particularly engaged in supporting his own safe-conduct. And when this malicious rapacity was not confined to private individuals, but broke out into general hostilities,—by the statute 2 Hen. V. st. 1, c. 6, the breaking of truce and safe-conducts, or abetting and receiving the truce-breakers, was, (in affirmance and support of the law of nations,) declared to be treason against the crown and dignity of the king; and conservators of truce and safe-conducts were appointed in every port, and empowered to hear and determine such treasons when committed at sea, according to the antient marine law then practised in the admiral's court. Which statute, so far as it made these offences amount to treason, was suspended by 14 Hen. VI. c. 8, and repealed by 20 Hen. VI. c. 11; but it was revived by 29 Hen. VI. c. 2, which gave the same powers to the lord chancellor, associated with either of the chief justices, as belonged to the conservators of truce and their assessors; and enacted that, notwithstanding the party be convicted of treason, the injured stranger should have restitution out of his effects, prior to any claim of the Crown. And it is further enacted by the statute 31 Hen. VI. c. 4, that if any of the king's subjects offend, upon the sea or in any port within the king's obeisance, against any stranger in amity, league or truce, or under safe-conduct,—and especially by attacking his person, or spoiling him or robbing him of his goods;—the lord chancellor, (with any of the justices of either the King's Bench or Common Pleas,) may cause full restitution and amends to be made to the party injured.

It is to be observed, that the suspending and repealing Acts of the fourteenth and twentieth years of Henry the

(*d*) 9 Hen. 3, c. 30.

[sixth, and also the reviving Act of the twenty-ninth of the same monarch, were only temporary; so that it should seem that, after the expiration of them all, the statute of the second year of Henry the fifth continued in full force: but yet it is considered as extinct by the statute 14 Edw. IV. c. 4; which revives and confirms all statutes and ordinances made before the accession of the house of York, against breakers of amities, truces, leagues, and safe-conducts, with an express exception of the statute of 2 Hen. V. st. 1, c. 6. And however that may be, this statute was finally repealed by the general statutes of Edward the sixth, and Queen Mary, for abolishing new created treasons (*e*); though Sir Matthew Hale seems to question it, as to treason committed on the sea (*f*).] But the statute of 31 Hen. VI. remained in force on our statute book till repealed as obsolete in the year 1863.

II. As to the rights of *ambassadors*, they have formerly been treated of at large, in that part of this work in which we discussed the nature and extent of the royal prerogative. And it may be recollected, that any violation of them amounts, by express legislative enactment, to a crime of a highly penal nature (*g*).

III. [Lastly, the crime of *piracy*, (or robbery and depredation upon the high seas,) is an offence against the universal law of society; a pirate being, according to Sir Edward Coke, *hostis humani generis* (*h*). As, therefore, he has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him; so that every community hath a right, by the rule of self-defence, to inflict that punishment upon him, which every individual would,

(*e*) Vide sup. p. 162, and 4 Bl. Com. p. 70.

(*f*) 1 Hale, P. C. 267.

(*g*) Vide sup. vol. II. p. 484.

(*h*) 3 Inst. 113.

[in a state of nature, have been otherwise entitled to do, for any invasion of his person or personal property.

By the antient common law, piracy if committed by an alien was felony, but if by a subject, was held to be a species of treason, being contrary to his natural allegiance; but now, since the statute of treasons, 25 Edw. III. c. 2, it is held to amount only to an ordinary felony (*i*). At the common law, it consisted in committing those acts of robbery and depredation upon the high seas, or other places where the admiralty has jurisdiction, which, if committed upon land, would have amounted to felony there (*k*). But, by statute, some other offences have been made piracy also; as, by stat. 11 & 12 Will. III. c. 7, made perpetual by 6 Geo. I. c. 19, if any natural-born subject commits any act of hostility upon the high seas, against others of her majesty's subjects, under colour of a commission from any foreign power; this, though it would be only an act of war in an alien, shall be construed piracy in a subject. And further (by the same Act), any commander, or other seafaring person, betraying his trust, and running away with any ship, boat, ordnance, ammunition or goods; or yielding them up, voluntarily, to a pirate; or conspiring to do these acts;—or any person assaulting the commander of a vessel to hinder him from fighting his ship, or confining him, or making or endeavouring to make a revolt on board (*l*); shall be adjudged a pirate, felon, and robber. Again, by the statute 8 Geo. I. c. 24, made perpetual by 2 Geo. II. c. 28, s. 7, the trading with known pirates, or furnishing them with stores or ammunition, or fitting out any vessel for that purpose, or in anywise consulting, combining, confederating, or corresponding with them; or the forcibly boarding any merchant vessel, (though without seizing or carrying her

(*i*) 3 Inst. 113.

(*k*) Hawk. P. C. b. 1, c. 37. As to the admiralty jurisdiction, vide sup. vol. I. p. 116; et post, c. XIV.

(*l*) See R. *v.* M'Gregor, 1 Car. & Kir. 430; R. *v.* Hastings, 1 M. C. C. R. 82.

[off,) and destroying or throwing any of the goods overboard;—was to be deemed piracy. Moreover, by statute 18 Geo. II. c. 30, any natural-born subject or denizen, who in time of war shall commit hostilities at sea against any of his fellow subjects, or shall assist an enemy on that element,—is liable to be tried and convicted as a pirate (*m*).] And, lastly, in our own times, a further addition has been made to the list of piratical offences. For, with a view of putting an effectual stop to the slave trade, the statute 5 Geo. IV. c. 113 (*n*), enacts, that if any British subject, wherever residing,—and whether within the dominion of Great Britain, or of any foreign country, or in the colonies,—shall (except in some particular cases therein specified), within the jurisdiction of the admiralty, knowingly convey or assist in conveying, persons as slaves, or to be dealt with as slaves, or ship them for that purpose, he shall be deemed guilty of piracy, felony and robbery (*o*).

Formerly the punishment for most piratical offences was death. But it has been thought expedient to relax this severity; and, now, whoever shall be convicted of piracy, is liable to be sentenced to penal servitude for life or any term not less than five years; or to be imprisoned, (with or without hard labour,) for any term not more than two years (*p*). But whoever, with intent to commit,

(*m*) Blackstone remarks (vol. iv. p. 73), that, under the statutes relating to piracy, commanders or seamen wounded, and the widows of seamen slain in any engagement with pirates, are entitled to a bounty to be divided amongst them, not exceeding one-fiftieth part of the value of the cargo on board. And further, that if the commander displays cowardice, he shall forfeit all his wages, and suffer six months' imprisonment. As to the condemnation in the Court of Admiralty of ships and goods taken from pirates, and the salvage payable by the owners, vide sup. vol. II. p. 18.

(*n*) See also the enactments in repression of the slave trade, cited vol. I. p. 109, n. (*x*).

(*o*) See R. *v.* Zulueta, 1 Car. & Kir. 215; Buron *v.* Denman, 2 Exch. 167.

(*p*) 5 Geo. 4, c. 113; 7 Will. 4 & 1 Vict. c. 88; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

or at the time of or immediately before or after committing, the crime of piracy, shall assault with intent to murder, or stab or wound, or unlawfully do any act by which the life of any person on board of or belonging to any ship or vessel may be endangered,—is liable to suffer death as a felon (*q*).

(*q*) 7 Will. 4 & 1 Vict. c. 88, s. 2. As to the general law with respect to wounding, &c. with intent to murder, vice sup. pp. 78, 79.

CHAPTER IX.

OF OFFENCES AGAINST JUSTICE.

WE are now arrived, according to the arrangement before laid down, at the consideration of offences against justice (*a*). Of these, some are felonious, others only misdemeanors.

I. The first of these which we shall mention, are stealing, injuring, forging or falsifying *records;* which practices are high offences against public justice. For no man's property would be safe if records might be suppressed or falsified, or persons' names be falsely usurped in courts (*b*) With regard to the stealing or injuring of records, this is provided against by 24 & 25 Vict. c. 96, s. 30; and it is made felony, punishable by penal servitude to the extent of *five* years (*c*), or imprisonment not more than two years, with or without hard labour and solitary confinement, to steal or fraudulently take from its proper deposit or custody,—or maliciously cancel, obliterate, injure or destroy,—any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatever, belonging to any court of record or equity, or relating to any matter in such court (*d*). And the forgery or falsification of records is provided against by 24 & 25 Vict. c. 98, ss. 27, 28, which enact that it shall be a felony punishable by

(*a*) Vide sup. p. 149.
(*b*) 4 Bl. Com. p. 128.
(*c*) See 27 & 28 Vict. c. 47.
(*d*) If the court think fit, it may also bind over the offender to keep the peace. (24 & 25 Vict. c. 96, s. 30.)

imprisonment as above mentioned, or penal servitude to the extent of *seven* years, to forge, or fraudulently alter or utter, any such court record or document as above specified. And that the above penalties shall also attach to any person who, as clerk of any court or otherwise, shall knowingly utter any false copy or certificate of any record, or forge the seal or process, of any court of record (*e*). There are also provisions on this subject contained in an earlier statute, viz., the 1 & 2 Vict. c. 94, intituled "An Act for keeping safely the Public Records." And by that statute it is enacted, that for any person employed in the Public Record Office to certify any writing as a true copy of a record in the custody of the Master of the Rolls, knowing the same to be false in any material part,—shall be felony: and he is punishable with penal servitude for life, or not less than five years; or imprisonment for not more than four, nor less than two years (*f*). Moreover, by 14 & 15 Vict. c. 99 (the "Evidence Amendment Act, 1851"), if any officer authorized or required by that Act to furnish any certified copies or extracts shall wilfully certify any document as being a true copy or extract, knowing that the same is not so, he shall be guilty of a misdemeanor; and be liable, upon conviction, to imprisonment for any term not exceeding eighteen months (*g*).

II. [*Striking*, or *other outrage, in the superior courts of justice*, in Westminster Hall, or at the assizes, is highly penal. Indeed by the antient common law before the Conquest, striking in the king's courts of justice, or drawing a sword therein, was a capital felony (*h*); and

(*e*) If the court think fit, it may also bind over the offender to keep the peace. (24 & 25 Vict. c. 98, s. 51.)

(*f*) 1 & 2 Vict. c. 94, s. 19; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*g*) 14 & 15 Vict. c. 99, s. 15.

(*h*) Wilk. Leg. Anglo-Sax. LL. Inæ, c. 6; LL. Canut. c. 56; LL. Alured. c. 7.

[our modern law retains so much of the antient severity, as only to exchange the loss of life for the loss of the offending limb. Therefore a stroke or blow in the superior courts, or courts of assize or *oyer* and *terminer*, whether blood be drawn or not; or assaulting a judge sitting in the court, by drawing a weapon, even without any blow struck;—is punishable with the loss of the right hand (*i*), imprisonment for life, and forfeiture of goods and chattels, and of the profits of the offender's lands during life (*k*). Moreover, not such only as commit actual violence of this description, but such as use threatening or reproachful words to any judge sitting in the courts, are guilty of a high misprision; and have been punished with large fines, imprisonment, and other corporal punishment (*l*). And even in the inferior courts, an affray or contemptuous behaviour is punishable with a fine, by the judges there sitting; as by the steward in a court leet, or the like (*m*).

(*i*) Lord Thanet and others were prosecuted by an information filed by the attorney-general, for a riot at the trial of Arthur O'Connor and others for treason, under a special commission at Maidstone. Two of the defendants were found guilty, generally. The three first counts charged (*inter alia*,) that the defendants did riotously make an assault on one J. R., and did then and there *beat, bruise, wound* and ill-treat the said J. R., in the presence of the commissioners. When the defendants were brought up for judgment, Lord Kenyon expressed doubts, whether, upon this information, the court was not bound to pronounce the judgment of amputation of the right hand, &c. as required in a prosecution expressly for striking in a court of justice. In consequence of these doubts, the attorney-general entered a *nolle prosequi* upon the three first counts; and the court pronounced judgment of fine and imprisonment, as for a common riot.—(Christian's Blackstone.)

(*k*) Staundf. P. C. 38; 3 Inst. 140, 141; Hawk. b. 1, c. 21, s. 3. So it is laid down that a *rescue* of a prisoner from any of the said courts, is punishable with perpetual imprisonment and forfeiture of goods, and of the profits of lands during life; but if no actual blow be given, amputation of the hand is excused. (4 Bl. Com. p. 125.) See as to *rescue* in other cases, post, p. 230.

(*l*) Harrison's case, Cro. Car. 503. The court itself, also, against which the contempt is committed, has power to punish it in a summary way by fine or imprisonment.

(*m*) Hawk. P. C. b. 1, c. 21, s. 11.

[III. Another species of offence, somewhat allied to the last,—is that of *intimidation, or other improper demeanour, practised towards the parties or witnesses in a court of justice.* As if a man assaults or threatens his adversary for suing him, a counsellor or attorney for being employed against him, a juror for his verdict, or a gaoler or other ministerial officer for keeping him in custody and properly executing his duty (*n*); or if a man endeavours to dissuade a witness from giving evidence, or advises a prisoner to stand mute; these are all impediments to justice, are high misprisions and contempts of the king's courts, and are punishable with fine and imprisonment. Antiently, indeed, it was held, that if one of the grand jury disclosed to any person indicted the evidence that appeared against him, he was thereby made an accessory to the offence, if felony, and in treason, a principal; and at this day it is agreed that he is guilty of a high misprision, and liable to be fined and imprisoned (*o*).

So as regards the jurors, the offence may be committed, which is described in the books as *embracery;* that is, attempting to influence them corruptly to one side, by promises, persuasions, entreaties, money, entertainments and the like.] The punishment for this misdemeanor in the person embracing and the juror embraced is, by the common law,—and also by statute 6 Geo. IV. c. 50, s. 61,—fine and imprisonment (*p*).

IV. A fourth offence of the same general character is, *obstructing a lawful arrest, or, generally, the execution*

(*n*) 3 Inst. 141, 142. Blackstone remarks (vol. iv. p. 126), that these offences, when they proceeded further than bare threats, were punished in the Gothic constitutions with exile and forfeiture of goods; and he cites Stiernh. de Jure Goth. l. 3, c. 2.

(*o*) See Barr. on Statutes, 212; 27 Ass. Pl. 44, s. 4, fol. 138; Hawk. P. C. b. 1, c. 21, s. 15.

(*p*) The false verdict of jurors, whether occasioned by embracery or not, was antiently considered as criminal; and therefore severely punished by means of the writ of *attaint.* (See 3 Bl. Com. pp. 388, 402; 6 Geo. 4, c. 50, s. 60.)

of lawful process. [This is, at all times, an offence of a very high and presumptuous nature: but more particularly so, when it is an obstruction of an arrest upon criminal process: and it hath been holden that the party opposing such arrest, becomes thereby *particeps criminis*; that is, an accessory in felony, and a principal in treason (*q*). Formerly one of the greatest obstructions to public justice, both of the civil and criminal kind, was the multitude of pretended privileged places, (especially in London and Southwark,) where indigent persons assembled together to shelter themselves from justice,—under the pretext of their having been antient palaces of the Crown, or the like (*r*).] But all of these sanctuaries for iniquity are now demolished, and the opposing of any process therein is made highly penal by the statutes 8 & 9 Will. III. c. 27; 9 Geo. I. c. 28; 11 Geo. I. c. 22; and 1 Geo. IV. c. 116: which enact, that persons opposing the execution of any process in such pretended privileged places within the bills of mortality, or abusing any officer in his endeavour to execute his duty therein, so that he receives bodily hurt; and all persons aiding and abetting such opposition; shall be guilty of felony. The principal provisions, however, as regard the offence now under consideration, are contained in the 24 & 25 Vict. c. 100, ss. 18, 38, which we had occasion to notice in reference to offences against the person; and to that part of the work the reader is accordingly referred (*s*).

V. [*Escape* and *Prison-breach.* An *escape* of a person, lawfully arrested for crime, by gaining his liberty before he is delivered by course of law, is also an offence against public justice (*t*). And the officer per-

(*q*) Hawk. P. C. b. 2, c. 17, s. 1.

(*r*) Such as *White Friars* and its environs; the *Savoy*; and the *Mint*, in Southwark. Some further information on the subject of the law of sanctuary will be found in a later part of this work.

(*s*) Vide sup. pp. 78, 96.

(*t*) Hawk. P. C. b. 2, c. 17, s. 3; c. 19, ss. 2, 3.

[mitting such escape, either by negligence or connivance, is much more culpable than the prisoner,—the natural desire of liberty pleading strongly in his behalf, though he ought in strictness of law to submit himself quietly to custody, till cleared by the due course of justice. Officers, therefore, who after arrest *negligently* permit a felon to escape, are punishable by fine (*u*); but *voluntary* escapes, by consent and connivance of the officer, are a much more serious offence: for it is generally agreed that such escapes amount to the same kind of offence, and are punishable in the same degree, as the offence of which the prisoner is guilty, and for which he is in custody; whether treason, felony or trespass. And this, whether he were actually committed to gaol, or only under a bare arrest (*x*). But the officer cannot be thus punished as for felony, till the original delinquent hath actually received judgment; or been attainted upon verdict, confession, or outlawry, of the crime for which he was so committed or arrested; otherwise it might happen that the officer might be punished for felony, and the person arrested and escaping might turn out to be an innocent man (*y*).] But before the conviction of the principal party, the officer thus neglecting his duty may by fined and imprisoned for a misdemeanor, and may be kept to hard labour besides (*z*). We may add here, that an escape permitted by a private person, is an offence of the same description as one permitted by an officer. For if any person has another in his lawful custody, as for crime committed, and suffers him to escape before he is delivered over to the proper authority, such person is liable to the same punishment as already stated in the case of a gaoler or other officer (*a*).

(*u*) 1 Hale, P. C. p. 600.

(*x*) Ib. p. 590; Hawk. P. C. b. 2, c. 19, s. 22.

(*y*) It is said, however, he is punishable, in the case of *treason*, where the party escaping has been actually guilty of treason, whether he has been attainted of it or not. (Hawk. P. C. b. 2, c. 19, s. 26.)

(*z*) 14 & 15 Vict. c. 100, s. 29.

(*a*) Hawk. P. C. b. 2, c. 20, s. 6.

As for the prisoner himself, *breach of prison* (or even conspiring to break it), was felony at the common law for whatever cause he was committed (*b*). But this severity was mitigated by the statute *De frangentibus prisonam*, (1 Edw. II. st. 2,) which enacted, that the offence should be deemed felonious only when judgment for felony would have ensued in case of his conviction (*c*). But to break prison when committed for any treason or felony, remains felony as at the common law notwithstanding the above statute (*d*); and it is now made punishable with penal servitude for not more than seven nor less than five years; or by imprisonment, (with or without hard labour, solitary confinement and whipping,) not exceeding two years (*e*). And to break prison, when lawfully confined, in any usual place of security, upon any other inferior charge, seems punishable as a high misdemeanor by fine and imprisonment (*f*). And for a convict to be at large (without lawful cause) before the expiration of the term for which he has been sentenced to be kept in penal servitude, is punishable by penal servitude for life, and previous imprisonment, with or without hard labour, for any term not exceeding four years; or else by imprisonment, with or without hard labour, not exceeding two years (*g*).

(*b*) Bract. l. 3, tr. 2, c. 9; 1 Hale, P. C. 607. See R. *v.* Haswell, R. & R. C. C. R. 458.

(*c*) 1 Hale, P. C. 609.

(*d*) It seems, however, that if the prisoner break prison but do not actually escape, it is no felony. (Hawk. P. C. b. 2, c. 18, s. 11.)

(*e*) 7 & 8 Geo. 4, c. 28, ss. 8, 9; 7 Will. 4 & 1 Vict. c. 90, s. 5; 14 & 15 Vict. c. 100, s. 29; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*f*) Hawk. P. C. b. 2, c. 18, s. 20.

(*g*) See 5 Geo. 4, c. 84, s. 22; 4 & 5 Will. 4, c. 67; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3. See also as to prison breach and escapes from *Millbank*, 6 & 7 Vict. c. 26, s. 22; from *Parkhurst*, 1 & 2 Vict. c. 82; ss. 12, 13; from *Pentonville*, 5 & 6 Vict. c. 29, s. 24. As to the apprehension of persons escaping from England to Scotland, and *vice versâ*, see 13 Geo. 3, c. 31. As to escapes to and from Ireland, see 44 Geo. 3, c. 92, s. 3.

VI. *Rescue* and *aiding prisoners to escape. Rescue* is the forcibly and knowingly freeing another from an arrest or imprisonment; and a rescue or an aiding a prisoner to escape, in the case of one charged with felony, is felony in the rescuer; with treason, treason; and with a misdemeanor, a misdemeanor (*h*). But it is said that the principal felon must first receive judgment before the rescuer can be punished as for felony: though even before, the rescuer may be prosecuted, at the discretion of the Crown, as for a misprision (*i*). These offences have now, however, been specially provided against by several statutes. For by 25 Geo. II. c. 37, s. 9, if any person shall rescue, or attempt to rescue, out of prison a person committed for, or found guilty of, murder; or a person convicted of murder, while going to, or during, execution (*j*),—he shall be deemed guilty of felony, and he may be sentenced to penal servitude for life, or not less than five years; or to imprisonment, with or without hard labour and solitary confinement, for not more than two years (*k*). By 52 Geo. III. c. 156, every person assisting a prisoner of *war* to escape shall be guilty of felony; and he may be sentenced to the same punishments as just mentioned (*l*). By 1 & 2 Geo. IV. c. 88, s. 1, the rescuer of any person charged with felony, is declared guilty of felony; and he may be sentenced to penal servitude for not more than seven nor less than five years; or to imprisonment, with or without hard labour,

(*h*) Hawk. P. C. b. 2, c. 21. It is a misdemeanor in the rescuer, though the person rescued be not confined on any *criminal* charge. (R. *v.* Allan, 1 Car. & M. 295.)

(*i*) 1 Hale, P. C. 598, 607; Fost. 344; Hawk. P. C. b. 2, c. 21, s. 8.

(*j*) By the same statute it is also a felonious act to rescue or attempt to rescue the body of a murderer *after* execution.

(*k*) 25 Geo. 2, c. 37, s. 9; 7 Will. 4 & 1 Vict. c. 91; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*l*) 52 Geo. 3, c. 156; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3. As to this offence, see R. *v.* Martin, R. & R. C. C. R. 196.

for not less than one nor more than three years (*m*). By 5 Geo. IV. c. 84, whoever shall rescue, or attempt to rescue, any offender under sentence or order of penal servitude (*n*) from the custody of any person charged with his removal, shall be guilty of felony: and he may be sentenced to penal servitude for life, and previous imprisonment, with or without hard labour, not exceeding four years; or to imprisonment, with or without hard labour, not exceeding two years (*o*). And, finally, by 28 & 29 Vict. c. 126, s. 37, every person who aids any prisoner in escaping or attempting to escape from any prison, or with intent to facilitate his escape conveys anything into the prison, shall be guilty of felony, and be imprisoned with hard labour to the extent of two years (*p*).

VII. [Another offence of the class under consideration is that of *taking a reward under pretence of helping the owner to his stolen goods.* This was a contrivance carried to a great length of villany in the reign of George the first, the confederates of the felons thus disposing of stolen goods, at a cheap rate, to the owners themselves, and thereby stifling all further inquiry. The famous Jonathan Wild had under him a well-disciplined corps of thieves, who brought in all their spoils to him; and he kept a sort of public office, for restoring them to the owners at half price. To prevent which audacious practice,—to the ruin, and in defiance, of public justice,—it was enacted by 4 Geo. I. c. 11, that whosoever should take a reward under the pretence of helping any one to stolen

(*m*) 1 & 2 Geo. 4, c. 88, s. 1; 14 & 15 Vict. c. 100, s. 29; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*n*) The expression used in 5 Geo. 4, c. 84, is "transportation or banishment;" but see 20 & 21 Vict. c. 3, s. 6.

(*o*) 5 Geo. 4, c. 84, s. 22; 4 & 5 Will. 4, c. 67; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3.

(*p*) See The Queen *v.* Payne, Law Rep., 1 C. C. 27.

[goods, should suffer as the felon who stole them; unless he caused such principal felon to be apprehended and brought to trial, and also gave evidence against him. Wild, still continuing in his old practice, was, upon this statute, at last convicted and executed.] These provisions, indeed, were afterwards repealed by 7 & 8 Geo. IV. c. 27, s. 1; but they have been re-enacted, with several improvements calculated for the more effectual prevention of the offence. For by 24 & 25 Vict. c. 96, s. 101 (*q*), it is provided, that whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, extorted, embezzled or converted, or disposed of, as in that Act mentioned,—shall (unless he shall have used all due diligence to cause the offender to be brought to trial for the same) be deemed guilty of felony. And the punishment is penal servitude for seven or for not less than five years (*r*); or imprisonment, with or without hard labour and solitary confinement, for any term not exceeding two years; and, if a male under the age of eighteen years, to be whipped, if the court shall so think fit, in addition to such imprisonment (*s*).

VIII. *Compounding of felony,* is the taking of a reward for forbearing to prosecute a felony; and one species of this offence, (known in the books by the more antient appellation of *theft-bote,*) is where a party robbed takes his goods again, or other amends, upon agreement not to prosecute. [This was formerly held to make a man an accessory to the theft, but is now punished only with fine

(*q*) Re-enacting 7 & 8 Geo. 4, c. 29, s. 58, repealed by 24 & 25 Vict. c. 95, as to the United Kingdom.

(*r*) See 27 & 28 Vict. c. 47.

(*s*) The court may also, if it see fit, bind over the offender to keep the peace. (24 & 25 Vict. c. 96, s. 117.)

[and imprisonment (*t*). This perversion of justice, in the old Gothic constitutions, was liable to the most severe and infamous punishment. Indeed the Salic law—"*latroni eum similem habuit, qui furtum celare vellet, et occulte sine judice compositionem ejus admittere*" (*u*).] And by statute 24 & 25 Vict. c. 96, s. 102 (amended by 33 & 34 Vict. c. 65), even publicly to advertise a reward for the return of property stolen or lost, and in such advertisement to use words purporting that no questions will be asked (*x*); or purporting that a reward will be paid without seizing or making inquiry after the person producing the same; or promising to return to a pawnbroker or other person any money he may have advanced upon or paid for such property, or offering any other sum of money or reward for the return of the same;—subjects the advertiser, the printer, and the publisher, to a forfeiture of fifty pounds each (*y*).

IX. Besides the last described offence, the mere concealment of a felony is by our law criminal; and is described, in the books, as *misprision of felony*. This is the concealment of some felony,—not being treason, the misprision of which has been before considered (*z*),—committed by another; but without such previous concert with, or subsequent assistance of him, as will make the party concealing an accessory before or after the fact. [And the punishment of misprision in a public officer, (by the statute Westminster the first, 3 Edw. I. c. 9,) is imprisonment for a year and a day; in a common person, imprisonment for a less, but discretionary time; and, in

(*t*) Hawk. P. C. b. 1, c. 59, s. 6.

(*u*) Stiern. de Jure Goth. l. 3, c. 5.

(*x*) Vide sup. p. 186.

(*y*) This provision re-enacts 7 & 8 Geo. 4, c. 29, s. 59. By the 33 & 34 Vict. c. 65, no action is to be brought under it against the printer or publisher of the advertisement more than six months after the forfeiture was incurred, nor unless the written assent of the attorney or solicitor-general has been first obtained.

(*z*) Vide sup. p. 165.

[both, fine and ransom at the king's pleasure; an expression which signifies here (as in other cases where it occurs), not any extrajudicial will of the sovereign: but such as is declared by his representatives, the judges in his courts of justice—"*voluntas regis in curiâ, non in camerâ*" (*a*).

X. *Compounding of informations upon penal statutes, or of misdemeanors,* is also illegal.

As to the first of these, the compounding of *informations upon penal statutes,* it is an offence against justice by contributing to make the laws odious to the public. At once, therefore, to discourage malicious informers, and to provide that offences, when discovered, shall be duly prosecuted,—it is enacted by 18 Eliz. c. 5, that if any person informing, under pretence of any penal law, makes any composition without leave of one of the courts at Westminster; or takes any money or promise from the defendant to excuse him;—which demonstrates his intent in commencing the prosecution to be merely to serve his own ends, and not the public good,—he shall forfeit 10*l.*; and he is also liable to suffer such imprisonment or additional fine, or both, as the court shall award, and shall be for ever disabled to sue on any popular or penal statute (*b*).

As to compounding *misdemeanors:* such a proceeding without leave of the court seems to be also illegal (*c*). But it is not uncommon when a person has been convicted of a misdemeanor more immediately affecting an individual,—as a battery, imprisonment or the like,—for the court to permit the defendant to *speak with the*

(*a*) 1 Hale, P. C. 375.

(*b*) The punishment given by 18 Eliz. is altered as in the text by the effect of 56 Geo. 3, c. 138. As to this offence, see R. *v.* Best, 9 Car. & P. 368; R. *v.* Crisp, 1 B. & A. 282.

(*c*) See Collins *v.* Blantern, 2 Wils. 341; Edgecombe *v.* Rodd, 5 East, 297; Keir *v.* Leeman, 9 Q. B. 371; 4 Bl. Com. 136, note by Christian.

[*prosecutor*, before any judgment is pronounced: and if the prosecutor declares himself satisfied, to inflict but a trivial punishment. This is done to reimburse the prosecutor his expenses, and make him some private amends, without the trouble and circuity of a civil action (*d*).

XI. *Common barratry* is the offence of *frequently* inciting and stirring up suits and quarrels between his majesty's subjects, either at law or otherwise (*e*). The punishment for this offence in a common person, is by fine and imprisonment; but if the offender, (as is too frequently the case,) belongs to the profession of the law, a barrator, who is thus able as well as willing to do mischief, ought also to be disabled from practising for the future. And, indeed, it has been enacted, that if any one who hath been convicted of forgery, perjury, subornation of perjury, or *common barratry*, shall practise as an attorney, solicitor or agent in any suit, the court, upon complaint, shall examine it in a summary way,] and, if such conduct be proved, the offender may be sentenced to penal servitude for not more than seven nor less than five years (*f*).

[Hereunto may also be referred another offence of equal malignity and audaciousness, that of suing another in the name of a fictitious plaintiff,—either one not in being

(*d*) Blackstone (vol. iv. p. 364) expresses a disapprobation of this practice, as contrary to the true policy of criminal jurisprudence. Even a voluntary forgiveness by the party injured "ought not," he says, "in true policy to intercept "the stroke of justice."

(*e*) Barratry is said to be a forensic term borrowed from the Normans: the Anglo-Norman *baret* signifying a quarrel or contention. See the notes to Bac. Abr. tit. Barratry (A). A single act of inciting, &c., is not sufficient. See R. *v.* Hardwicke, 1 Sid. 282; R. *v.* Hannon, 6 Mod. 311; Hawk. P. C. b. 1, c. 81, s. 5.

(*f*) See 12 Geo. 1, c. 29; 21 Geo. 2, c. 3; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47. In the Attornies Act, 6 & 7 Vict. c. 73, the statute 12 Geo. 1, c. 29, is recognized as existing, and is left unrepealed.

[at all, or one who is ignorant of the suit. This offence, if committed in any of the superior courts, is left, as a high contempt, to be punished at their discretion. But in courts of a lower degree, where the crime is equally pernicious, but the authority of the judges not equally extensive, it was directed by 8 Eliz. c. 2, s. 4, to be punished by six months' imprisonment, and damages to the party injured.

XII. *Maintenance* is an offence that bears a near relation to the former; being an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party, with money or otherwise, to prosecute or defend it(*g*): a practice that was greatly encouraged by the first introduction of uses(*h*). This is an offence against justice, as it keeps alive strife and contention, and perverts the remedial process of the law into an engine of oppression(*i*). And therefore by the Roman law, it was a species of the *crimen falsi* to enter into any confederacy, or to do any act to support another's lawsuit by money, witnesses or patronage(*k*). A man may, however, maintain the suit of his near kinsman(*l*), servant(*m*), or poor neighbour(*n*), out of charity and compassion, with impunity; or he may maintain a suit in which he has any interest, actual or contingent(*o*).

(*g*) Hawk. P. C. b. 1, c. 83, s. 23.

(*h*) Dr. and Stud. 203. As to uses, vide sup. vol. I. p. 356.

(*i*) Co. Litt. 368 (b); 2 Inst. 208, 212, 213; Hawk. ubi sup. Maintenance may consist (according to Bacon) not only in the officious intermeddling in suits as described by Blackstone (vol. iv. p. 135), which is termed *curialis;* but also in assisting another to his pretensions to lands, or holding them for him by force or subtilty, or stirring up quarrels in the county, in relation to matters wherein one is no way concerned. And this species is known by the name of *ruralis*. (See Bac. Abridg. in tit. Maintenance.)

(*k*) Ff. 48, 10, 28.

(*l*) Bac. Abridg. in tit. Maintenance; Hawk. P. C. b. 1, c. 83, s. 26.

(*m*) Hawk. ubi sup. ss. 31, 32, 33.

(*n*) Bro. Abr. tit. Maintenance, (14).

(*o*) Hawk. ubi sup. ss. 14, 15; Master *v.* Miller, 4 T. R. 340; Williamson *v.* Henley, 6 Bing. 290. As

[Otherwise the punishment by common law, and also by statute 1 Rich. II. c. 4, is fine and imprisonment (*p*); and by statute 32 Hen. VIII. c. 9, a forfeiture of ten pounds.

XIII. *Champerty* (*campi partitio*) is a species of maintenance, and punished in the same manner (*q*)—being a bargain with a plaintiff or defendant *campum partire*, to divide the land or other matter sued for if he shall prevail at law; whereupon the champertor is to carry on the party's suit at his own expense (*r*). Thus *champart*, in the French law, signifies a similar division of profits; being a part of the crop annually due to the landlord by bargain or custom. These pests of civil society, that are perpetually endeavouring to disturb the repose of their neighbours, and officiously interfering in other men's quarrels, even at the hazard of their own fortunes, were severely animadverted upon by the Roman law, "*qui improbè coëunt in alienam litem, ut quicquid ex condemnatione in rem ipsius redactum fuerit inter eos communicaretur, lege Juliâ de vi privatâ tenentur*" (*s*). And they were punished by the forfeiture of a third part of their goods, and by perpetual infamy (*t*). Hitherto must also be referred the provisions of the statute 32 Hen. VIII. c. 9, that no one shall sell or purchase any pretended right or title to land, unless the vendor hath received the profits thereof for one whole year before such grant, or hath

to what amounts to the offence of maintenance by an *attorney*, see Earle *v.* Hopwood, 9 C. B., N. S. 566.

(*p*) Hawk. ubi sup. s. 38; 2 Inst. 208.

(*q*) Hawk. ubi sup. b. 1, c. 84, s. 1.

(*r*) Statute of Conspiracy, 33 Edw. 1, st. 2.

(*s*) Ff. 48, 7, 10.

(*t*) There are on the subject of champerty the following statutes of antient date:—3 Edw. 1, c. 25; 21 Edw. 1, stat. 3, c. 11; 33 Edw. 1, st. 3; 4 Edw. 3, c. 11. See also the following cases as to what amounts to maintenance and champerty: Stevens *v.* Bagwell, 15 Ves. jun. 139; Williams *v.* Protheroe, 5 Bing. 309; Stanley *v.* Jones, 7 Bing. 369; Bell *v.* Smith, 5 B. & C. 188; Grell *v.* Levy, 16 C. B., N. S. 73.

[been in actual possession of the land, or of the reversion or remainder,—on pain that both purchaser and vendor shall each forfeit the value of such land to the king and the prosecutor (*u*).]

XIV. *Conspiracy* may be correctly described, in general, as a combination or agreement between *two* or *more* persons to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large (*x*); though this is subject to an exception in the case where the purpose is a felonious one, and *actually accomplished*;—the offence of conspiracy, (which is a misdemeanor only,) being then merged in the felony. Thus there may be conspiracy to commit murder or other crime; to seduce a female (*y*); to injure the public health by selling unwholesome provisions (*z*); to raise the funds by the propagation of false intelligence (*a*), to defraud some person or persons of his or their property (*b*); and the like (*c*). But one of the chief species of this offence, (and that which brings it within the subject matter of the present chapter,) is that of falsely and maliciously conspiring to indict an innocent man (*d*). [This

(*u*) As to this statute, see Cholmondeley *v.* Clinton, 4 Bligh, N. S. 4.

(*x*) See Mulcahy *v.* The Queen, Law Rep., 3 Ap. Ca. 306. Conspiracy has been frequently said to consist either of an agreement for an unlawful purpose, or to effect a lawful purpose by unlawful means. (R. *v.* Seward, 1 A. & R. 713; R. *v.* Jones, 4 B. & Ad. 349.) But the correctness of the antithesis has been questioned on high authority (R. *v.* Peck, 9 A. & E. 686); and it is clear that the terms *lawful* and *unlawful*, as here used, themselves require a definition. In many cases, too, it is difficult to distinguish precisely between the *purpose* and the *means*, in cases of conspiracy. As to the nature of this offence, see also Reg. *v.* Carlisle, 1 Dearsley's C. C. R. 337.

(*y*) See R. *v.* Grey, 3 St. Tr. 519; R. *v.* Delaval, 3 Burr. 1434.

(*z*) See R. *v.* Mackarty and Fordenbourgh, 2 Ld. Raym. 1779; 2 East, P. C. c. 18, s. 5; 6 East, 133.

(*a*) See R. *v.* De Beranger, 3 M. & S. 67.

(*b*) See Queen *v.* Gomperts and others, 9 Q. B. 824.

(*c*) Hawk. P. C. b. 1, c. 72, s. 2.

(*d*) Hawk. ubi sup. et s. 9; 3 Inst. 143; see R. *v.* Spragg, 2 Burr. 998; R. *v.* Macdaniel, 1 Leach, C. C. 45:

[is an abuse and perversion of justice; for which the party injured may either have a civil action, or else the conspirators may be indicted at the suit of the Crown (*e*); and (being convicted) they were by the antient common law to receive what was called the villenous judgment (*f*): viz., to lose their *liberam legem*, whereby they were discredited and disabled as jurors and witnesses; to forfeit their goods and chattels, and lands for life; to have those lands wasted, their houses razed, their trees rooted up, and their bodies committed to prison (*g*). But it is now the better opinion that the villenous judgment is by long disuse become obsolete, it not having been pronounced for some ages (*h*); but instead thereof, the conspirators are usually sentenced to fine and imprisonment (*i*);] to which, by 14 & 15 Vict. c. 100, s. 29, may now be added, (in most cases of conspiracy,) hard labour, during the whole or any part of the term of imprisonment. We may add that, with regard to a conspiracy, the object of which is to commit the particular crime of *murder*, there is a provision contained in 24 & 25 Vict. c. 100, by which it is enacted, that all persons who shall conspire, confederate and agree to murder any person, (whether a subject of her majesty or not, and whether within her dominions or not,) and whosoever shall solicit, encourage, persuade or endeavour to persuade, or shall propose to any person, to

As to the *felonious* offence of actually accusing or actually threatening to accuse of crime, with intent to extort property, vide sup. pp. 128, 129.

(*e*) In some cases, before an indictment for a conspiracy can be presented to or found by a grand jury, security must be given for the due prosecution of the charge. (22 & 23 Vict. c. 17; 30 & 31 Vict. c. 35, s. 1.)

(*f*) Bro. Abr. tit. Conspiracy, 28.

(*g*) Hawk. P. C. b. 1, c. 72, s. 9.

(*h*) It is to be observed, in reference to this subject, that until a recent period persons who were *infamous*, that is, of such a character that they might be challenged as jurors *propter delictum*, were, independently of any villenous judgment, inadmissible as witnesses. But they are now made competent by 6 & 7 Vict. c. 85.

(*i*) Blackstone adds "pillory," but this punishment is now abolished. Vide post, p. 244, n. (*g*).

murder any other person,—shall be severally guilty of a misdemeanor, and be punishable either by imprisonment (with or without hard labour) to the extent of two years; or, at the discretion of the court, by *penal servitude*, to the extent of ten years or not less than five years (*k*).

With respect to the offence of conspiracy, it may be remarked, that it is deemed to consist rather in the guilty combination or agreement, than in the act by which it is carried into effect: and therefore, in an indictment for conspiring to do a thing in itself unlawful, it is not necessary to allege that the thing was in fact done (*l*); though, supposing it to have been done, it is usual to state the unlawful agreement or conspiracy first, and then to charge the thing done, (or overt act, as it is called,) to have been committed in pursuance of the conspiracy (*m*). It is also observable, that the effect of the state of the law relative to conspiracy, is often to render a purpose criminal when concerted by several, which would not be of that character, if entertained merely by an individual; a distinction which rests on very solid ground; for though every wrong may not be of dangerous tendency to the public, yet every coalition to promote wrong is manifestly of that character. Accordingly it is held, that a false and malicious indictment, if preferred by an individual, is no crime, though it is a cause of civil action (*n*); but if planned by several persons, it is, as we have seen, the legal offence of conspiracy. So a combination among workmen, to raise the price of wages, was once deemed to be, in every case, a conspiracy; though the same object, if contemplated by

(*k*) 24 & 25 Vict. c. 100, s. 4. (See 27 & 28 Vict. c. 47.) The offender, if the court see fit, may also, either in addition to or in lieu of any other punishment, be bound over with sureties to keep the peace and be of good behaviour. (Sect. 71.)

(*l*) See 9 Rep. 56 b; R. *v.* Kimberty, 1 Lev. 62; R. *v.* Best, Lord Raym. 1167; S. C. Salk. 174; R. *v.* Seward, 1 A. & E. 713.

(*m*) As to the form of the indictment, see R. *v.* Steel, 1 C. & M. 837.

(*n*) Leith *v.* Pope, 2 Bl. Rep. 1328; see 2 Russ. on Crimes, p. 674.

a single workman, would not have been criminal (*o*). But the law on this subject is now materially altered; for by the Trade Union Act, 1871 (34 & 35 Vict. c. 31), it has been enacted, that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render the members liable to prosecution for conspiracy or otherwise; or so as to make such purposes unlawful, so as to render void or voidable any agreement or trust (*p*). On the other hand, by statute 34 & 35 Vict. c. 32, it is also provided, that every person who shall *molest or obstruct with a view to coerce* any master to dismiss any workman, or not to offer any employment, or to belong or not to belong to any combination, or to pay any fine imposed thereby, or to alter the mode of carrying on his business or the number of persons he employs; or with a view to coerce any workmen to quit any employment, or return work before it is finished, or not to accept any employment or work, or to belong or not to belong to any association or combination, or to pay any fine imposed thereby, shall be liable to imprisonment, with or without hard labour, for the space of three months (*q*).

(*o*) R. *v.* Tailors of Cambridge, 8 Mod. 10; R. *v.* Ridgeway, 5 B. & Ald. 527.

(*p*) By this Act (which also contains provisions for registering trade unions, and confers certain privileges on such as shall be duly enrolled) the Trades Union Protection Act, 1869 (32 & 33 Vict. c. 61), is repealed. We may here take occasion to refer to the 30 Vict. c. 8, under which Act the organization and rules of certain *trades unions* and other associations, and the truth of certain alleged outrages consequent thereon, were made the subject of a judicial investigation before commissioners appointed for the purpose, and armed with extensive powers to facilitate their inquiries.

(*q*) This Act is not to prevent the offender being proceeded against under any other Act, or otherwise, under which he is liable to a higher punishment, so that he be not punished twice for the same offence. This statute repeals the earlier provisions on this subject contained in 6 Geo. 4, c. 129, and 22 Vict. c. 34. As to which see Wood *v.* Bowron, Law Rep., 2 Q. B. 21; Skinner *v.* Webb, ib. 393; Springhead Spinning Company *v.* Riley, ib.; 6 Eq. Ca. 558.

XV. The next offence against public justice is that of *perjury*; which is defined by Sir E. Coke (*r*) "to be a "crime committed, when a lawful oath is ministered by "any that hath authority, to any person, in any judicial "proceeding, who sweareth absolutely and falsely, in a "matter material to the issue or cause in question." [The common law takes no notice of any perjury, but such as is committed in some court of justice having power to administer an oath (or before some magistrate, or proper officer, invested with a similar authority) in some proceedings relative to a civil suit or a criminal prosecution: for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them.] But by the express provision of many modern statutes, it is enacted that a false oath taken in certain cases, not of a judicial kind, shall be deemed to amount to perjury, and be visited with the same penalties (*s*).

A mere voluntary oath, however,—that is, an oath administered in a case for which the law has not provided,—is not one on which perjury can be assigned; for as such a proceeding is not required, so neither is it protected by the law. Indeed, such voluntary oaths are now expressly prohibited by statute 5 & 6 Will. IV. c. 62, which provides, that a certain form of declaration may be substituted for them, and that any party falsely making such declaration shall be guilty of a misdemeanor.

Perjury, by the definition, must be *absolute*, as well as false,—that is, it must be in positive terms. Yet a man will be guilty of the offence, if he swears he believes to

(*r*) 3 Inst. 164.

(*s*) We may remark here, that the penalties of perjury attach to wilful falsehood in an *affirmation* by a *Quaker*, *Moravian*, or *Separatist*. They also attach to the affirmation of a *witness* (on oral examination or otherwise) in lieu of taking an oath, under 17 & 18 Vict. c. 125, s. 20, and 24 & 25 Vict. c. 66; or of a *juror*, under 30 & 31 Vict. c. 35, s. 8.

be true a fact or statement which he knows to be false (*t*). Perjury must also be *corrupt* or *wilful*, (that is, committed *malo animo*,) not upon surprise or the like (*u*). It must also be, in some point, *material* to the question in dispute (*x*); for if it only be in some trifling collateral circumstance to which no regard is paid, it is no more penal than in the voluntary extra-judicial oaths before mentioned.

Subornation of perjury is the offence of procuring another to take such a false oath as constitutes perjury in the principal (*y*).

Perjury and subornation are both misdemeanors; and their punishment, at common law, has been various (*z*). It was antiently death; afterwards banishment, or cutting out the tongue; then forfeiture of goods; and, latterly, fine and imprisonment (*a*). But additional punishments for this offence have been enacted by various statutes. By 5 Eliz. c. 9, an offender convicted of perjury may be imprisoned for six months and fined 20*l.*; and if convicted of subornation, may be fined 40*l.*, and, in default of payment, is liable to the same period of imprisonment (*b*). Moreover, under 2 Geo. II. c. 25, the perjurer or suborner may be sent to the house of correction, with hard labour, for seven years; or (under the same statute as affected in its punishment by later Acts), may be sentenced to penal servitude for not more than seven nor less

(*t*) Pedley's case, 1 Leach, C. C. 365.

(*u*) Hawk. P. C. b. 1, c. 69, s. 2.

(*x*) R. *v.* Aylett, 1 T. R. 69; and see Queen *v.* Bennett, 20 L. J. (M. C.) 217; Queen *v.* Phillpotts, 21 L. J. (M. C.) 18.

(*y*) If the party suborned does not actually take an oath, the person inciting him so to do is still liable to punishment. (Hawk. P. C. b. 1, c. 69, s. 2.)

(*z*) In some cases, security must be given by the prosecutor for the due prosecution of a charge of perjury. (See 22 & 23 Vict. c. 17; and 30 & 31 Vict. c. 35, s. 1.)

(*a*) 4 Bl. Com. p. 138.

(*b*) This statute was at first temporary, but made perpetual by enactments in 29 Eliz. c. 5, and 21 Jac. 1, c. 28. These provisions were repealed by 26 & 27 Vict. c. 125, which also repealed the words at the close of the 5 Eliz. c. 5, limiting its continuance.

than five years (*c*). And by 3 Geo. IV. c. 114, such offenders may be sentenced to *hard labour* for any term for which they may be imprisoned; and that, either in addition to or in lieu of any other punishment (*d*).

[It has been sometimes wished that perjury, at least upon capital accusations, whereby another's life has been or might have been destroyed, were also rendered capital, upon a principle of retaliation. And, indeed, where the death of an innocent person has been actually the consequence of such wilful perjury it falls within the guilt of deliberate murder, and deserves an equal punishment; which, it has been said, our antient law in fact inflicted (*e*). But the mere *attempt* to destroy life by other means not being capital, there is no reason that an attempt by perjury should be so (*f*); and therefore it seems, except perhaps in the instance of deliberate murder by perjury, very properly punished by our present law; which has adopted the opinion of Cicero derived from the law of the Twelve Tables, "*perjurii pœna divina exitium, humana dedecus*" (*g*).

XVI. *Bribery*, is when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behaviour in his office (*h*). In the

(*c*) 2 Geo. 2, c. 25, s. 2; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*d*) By 14 & 15 Vict. c. 100, s. 19, any court has, in general, the power of directing a witness to be prosecuted for perjury, in regard to the evidence he has given in any cause or proceeding had therein.

(*e*) Britton, c. 5. Vide sup. p. 68, n. (*x*).

(*f*) As to attempts to murder, vide sup. p. 78.

(*g*) De Leg. 2, 9. Until recently the *pillory*, which had been abolished in all other cases by 56 Geo. 3, c. 138, was retained for the punishment of perjury and subornation. But this punishment is now altogether abolished by 7 Will. 4 & 1 Vict. c. 23. Another consequence that attended a conviction for this crime, until a recent period, was a perpetual disability to bear testimony. But a witness cannot now be excluded from being heard by reason of his having been convicted of crime. Such fact only affects his credibility. (6 & 7 Vict. c. 85.)

(*h*) 3 Inst. 145; Hawk. P. C. b. 1, c. 67.

[East, it is the custom never to petition any superior for justice, not excepting their kings, without a present. This is calculated for the genius of despotic countries, where the true principles of government are never understood; and it is imagined that there is no obligation from the superior to the inferior; no relative duty owing from the governor to the governed. Plato, therefore, more wisely, in his ideal republic, orders those who take presents for doing their duty, to be punished in the severest manner (*i*); and by the law of Athens, he that offered was also prosecuted, as well as he that received a bribe (*k*). The Roman law, though it contained many severe injunctions against bribery,—as well for selling a man's vote in the senate or other public assembly, as for the bartering of common justice;—yet, by a strange indulgence in one instance, it tacitly encouraged this practice; as it allowed the magistrate to receive small presents, provided they did not in the whole exceed one hundred crowns in a year,—not considering the insinuating nature and gigantic progress of this vice when once admitted (*l*). In England this offence of taking bribes is punished, in inferior officers, with fine and imprisonment; and in those who offer a bribe, though not taken, by the same (*m*).] But in judges, it hath always been looked upon as particularly heinous; and there is even a tradition that in the reign of Edward III. chief justice Thorpe was hanged for this offence (*n*). [By a statute of the eleventh year of Henry the fourth, all judges

(*i*) De Leg. l. 12.

(*k*) Pott. Antiq. b. 1, c. 23.

(*l*) Ff. 48, 11, 6.

(*m*) 3 Inst. 147.

(*n*) Blackstone (vol. iv. p. 140) says he was actually hanged; but Lord Coke (3 Inst. 145) denies that Thorpe was hanged, or could be hanged for this offence; and Lord Campbell, in his Lives of the Chief Justices (vol. i. p. 91), considers the tradition, that sentence of death was actually passed on him, to be unfounded; and to have been invented by Oliver St. John in inveighing against the judges who, in the reign of Charles I., decided in favour of the legality of ship-money.

[and officers of the king, convicted of bribery, shall forfeit treble the bribe; be punished at the king's will; and be discharged from the king's service for ever (*o*). And some notable examples have been made in parliament, of persons in the highest stations, and otherwise very eminent and able, but contaminated with this sordid vice (*p*).

XVII. Another misdemeanor of the same species, is the *negligence of public officers* intrusted with the administration of justice,—as sheriffs, coroners, constables, and the like,—which makes the offender liable to be fined: and, in very notorious cases, will amount to a forfeiture of his office, if it be a beneficial one (*q*).

XVIII. There is yet another offence against public justice, which is a misdemeanor of deep malignity; and so much the deeper, as there are many opportunities of putting it in practice, and the power and wealth of the offenders may often deter the injured from a legal prosecution. This is the *oppression* and *tyrannical partiality*, of judges, justices, and other magistrates, in the administration and under the colour of their office. However, when prosecuted,—either by impeachment in parliament, or by information in the Court of Queen's Bench, (according to the rank of the offenders,) it is sure to be severely punished with forfeiture of office either consequential or immediate; together with fines, imprisonment, or other discretionary censure, regulated by the nature and aggravations of the offence committed (*r*).

(*o*) See 3 Inst. 147.

(*p*) As to the offence of bribery and corruption at *elections*, vide sup. vol. II. p. 375. As to bribery of *custom house officers*, see 16 & 17 Vict. c. 107, s. 262; of *excise officers*, 7 & 8 Geo. 4, c. 53, s. 12. As to bribery of officers *of the Court of Chancery*, see 3 & 4 Will. 4, c. 94, s. 41. As to bribery of *public officers in the East Indies*, see 33 Geo. 3, c. 52, s. 62.

(*q*) Hawk. P. C. b. 1, c. 66; and see R. *v.* Pinney, 3 B. & Ad. 946; R. *v.* Neale, 9 Car. & P. 431.

(*r*) Hawk. P. C. b. 1, c. 68; and see R. *v.* Holland, 5 T. R. 607.

[XIX. Lastly, *extortion* is an abuse of public justice; which consists in any officer's unlawfully taking, by colour of his office, from any man, any money or thing of value, that is not due to him, or more than is due, or before it is due. The punishment for this misdemeanor is fine and imprisonment, and sometimes a forfeiture of the office (*s*).]

(*s*) See 3 Edw. 1, c. 26; 3 Inst. 145; R. *v.* Gilham, 6 T. R. 265; R. *v.* Jones, 2 Camp. 131. As to extortion by British subjects in the East Indies, in receiving gifts, see 33 Geo. 3, c. 52, s. 62; Re Capt. Douglas, 3 Q. B. 825; Douglas *v.* Queen, 13 Q. B. 74. And see on the subject of extortion in general, Bac. Abr. tit. Fees; Jac. L. Dict. Extortion, &c.

CHAPTER X.

OF OFFENCES AGAINST THE PEACE.

WE are next to consider offences against the peace (*a*); in our consideration of which, however, it is to be understood, that those are here passed over which more immediately and properly range themselves under other divisions of the work,—such as offences against the person, and the like. Those at present in question, are of two sorts; amounting either to actual breaches of the peace, or only to acts provocative of a breach of the peace by others. [Actual breaches of the peace are either felonious, or not felonious—the former being strained up to that degree of malignity, by virtue of several modern statutes; and particularly,

I. *The riotous assembling of twelve persons or more, and not dispersing upon proclamation.* This was made treason by statute 3 & 4 Edw. VI. c. 5; when the king was a minor, and a change of religion to be effected. But that statute was repealed by the first Act of Queen Mary, among the other treasons created since the twenty-fifth year of Edward the third; though the prohibition was in substance re-enacted, with an inferior degree of punishment, by statute 1 Mar. st. 2, c. 12; which made the same offence a simple felony. The statutes specified and particularized the nature of the riots they were meant

(*a*) At a former place we remarked, after Blackstone, that crimes "almost always include a breach of the public peace" (vide sup. p. 47), but the crimes spoken of in this chapter, are those which are directed more particularly against the peace.

[to suppress; as, for example, such as were set on foot with intention to offer violence to the Privy Council; or to change the laws of the kingdom; or for certain other specified purposes. In which cases, if the persons were commanded by proclamation to disperse, and they did not, it was by the statute of Mary made felony, but within the benefit of clergy; and also the Act indemnified the peace officers and their assistants, if they killed any of the mob in endeavouring to suppress such riot. This was thought a necessary security in that sanguinary reign when popery was intended to be established, which was like to produce great discontents: but at first it was made only for a year, and was afterwards continued for that queen's life. And by statute 1 Eliz. c. 16, when a reformation in religion was to be once more attempted, it was revived and continued during her life also, and then expired. From the accession of James the first to the death of Queen Anne, it was never once thought expedient to revive it; but in the first year of George the first, it was judged necessary, in order to support the execution of the Act of Settlement, to renew it; and at one stroke to make it perpetual, with large additions. For whereas the former Acts expressly defined and specified what should be accounted a riot, the statute 1 Geo. I. st. 2, c. 5, commonly called "the Riot Act," enacts generally, that if any twelve persons are unlawfully assembled to the disturbance of the peace; and any one justice of the peace, sheriff, under-sheriff or mayor of a town, shall think proper to command them by proclamation to disperse,—if they contemn his orders, and continue together for one hour afterwards, such contempt shall be felony:] and the punishment is penal servitude for life, or not less than five years; or imprisonment, with or without hard labour or solitary confinement, for not more than two years (*b*). [The Riot Act declares further, that if the reading of

(*b*) 1 Geo. 1, st. 2, c. 5; 7 Will. 4 & 1 Vict. c. 91; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

[the proclamation be by force opposed, or the reader be in any manner wilfully hindered from the reading of it, such opposers and hinderers, and all persons to whom such proclamation *ought to have been made*, and knowing of such hindrance, and not dispersing, are felons:] and they are liable to the like punishment (*c*). [The same Act also contains a clause indemnifying the officers and their assistants in case any of the mob be unfortunately killed in the endeavour to disperse them;—such clause being copied from the Act of Queen Mary (*d*).]

II. *Riotously demolishing churches, houses, buildings or machinery.* By 24 & 25 Vict. c. 97, if any persons, riotously and tumultuously assembled together to the disturbance of the peace, shall unlawfully and with force demolish, pull down, or destroy (or begin to demolish, pull down, or destroy) any *church*, chapel, meeting-house, or other place of divine worship; or any *house*, stable, or other such buildings, engines, or machinery as in the Act mentioned,—they shall be guilty of felony: and are liable to penal servitude for life, or any term not less than five years; or to be imprisoned, with or without hard labour, for any term not more than two years (*e*).

And by 7 & 8 Geo. IV. c. 31, ss. 2, 3, if any church, chapel, house, or such buildings or machinery as in that Act mentioned, shall be feloniously demolished, (wholly

(*c*) 1 Geo. 1, st. 2, c. 5; 7 Will. 4 & 1 Vict. c. 91; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3.

(*d*) Provisions were also contained in 1 Geo. 1, c. 5, against the riotous destruction of churches and other places of religious worship, making such offences capital felonies; but these enactments were repealed by 7 & 8 Geo. 4, c. 27; and the offence of riotous demolishment generally, otherwise provided against by 7 & 8 Geo. 4, c. 30, s. 8. This last provision is repealed by 24 & 25 Vict. c. 95, but re-enacted by that which is given in the text.

(*e*) 24 & 25 Vict. c. 97, s. 11. (See 27 & 28 Vict. c. 47.) The offenders, if the court think fit, may also be bound over with sureties to keep the peace. (Sect. 73.)

or in part,) by persons riotously and tumultuously assembled together, the inhabitants of the hundred shall be liable to yield full compensation (*f*); provided that the persons damnified, or such of them as have knowledge of the circumstances, or the servants who had the care of the property, shall, within seven days, go before some justice of the peace residing near and having jurisdiction; and state upon oath the names of the offenders, if known; and submit to examination touching the circumstances; and become bound, by recognizance, to prosecute: and provided also, that an action against the hundred be commenced within three calendar months after the offence (*g*).

III. By 24 & 25 Vict. c. 100, s. 16, whosoever shall maliciously send, deliver or utter, or directly or indirectly cause to be received, knowing the contents thereof, any *letter or writing threatening to kill or murder any person* (*h*), shall be guilty of felony and punishable by penal servitude for ten years, or not less than five (*i*), or by imprisonment with or without hard labour and solitary confinement to the extent of two years, and with whipping if the court thinks fit and the offender be a male under the age of sixteen years (*k*).

(*f*) As to the "hundred," vide sup. vol. I. p. 126.

(*g*) When the damage caused by the demolition or attempted demolition does not exceed 30*l.* the statute (7 & 8 Geo. 4, c. 31, s. 8) gives, instead of an action, a summary proceeding before justices at a special petty session. By 2 & 3 Will. 4, c. 72, the provisions of 7 & 8 Geo. 4, c. 31, on this subject are extended to the damage or destruction of *threshing machines:* and by the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 477, to the plunder, damage or destruction of *ships or boats* stranded or in distress.

(*h*) It is remarked by Blackstone (vol. iv. p. 143), that this crime was formerly *high treason* by 8 Hen. 5, c. 6. As to the "new and strange treasons," invented at that period of our history and afterwards done away with by 1 Edw. 6, c. 12, vide sup. p. 162.

(*i*) See 27 & 28 Vict. c. 47.

(*k*) The former provisions on this subject, contained in 9 Geo. 1, c. 22, and 27 Geo. 2, c. 15, were repealed by 4 Geo. 4, c. 54, s. 3, which was itself repealed by 24 & 25 Vict.

The offences already mentioned comprise such breaches of the peace as amount to felony. The remainder are of a lighter character.

IV. [*Affrays*, (from *affraier*, to terrify,) are the fighting of two or more persons in some public place (*l*), to the terror of her Majesty's subjects; for if the fighting be in private it is no *affray*, but an *assault* (*m*). Affrays are misdemeanors; and may be suppressed by any private person present: who is justifiable in endeavouring to part the combatants, whatever consequences may ensue (*n*). But more especially the constable or other similar officer, however denominated, is bound to keep the peace; and to that purpose may break open doors to suppress an affray, or apprehend the affrayers: and may either carry them before a justice, or imprison them by his own authority for a convenient space till the heat is over (*o*). The punishment of *common* affrays, is by fine and imprisonment: the measure of which must be regulated by the circumstances of the case: for, where there is any material aggravation, the punishment proportionably increases. As where two persons coolly and deliberately engage in a duel (*p*); this being attended with an apparent intention and danger of murder, and being a high contempt of the justice of the nation, is a strong aggravation of the affray,] and may even amount to felony under 24 & 25 Vict. c. 100, s. 14, though no mischief has actually en-

c. 95. It may be observed, that the offender, on conviction, may also, if the court see fit, be bound over with sureties to keep the peace. (24 & 25 Vict. c. 100, s. 71.)

(*l*) As in the case of a prize fight or other pugilistic combat. 1 East, P. C. c. 5, s. 41; R. *v.* Bellingham, 2 C. & P. 234; Hawk. P. C. b. 1, c. 63, s. 2.

(*m*) Hawk. P. C. ubi sup.

(*n*) Hawk. P. C. b. 1, c. 63, s. 13.

(*o*) Ibid. It seems that a constable has no power to arrest without warrant, for an *affray* committed out of his own presence. See Cook *v.* Nethercote, 6 C. & P. 741; Fox *v.* Gaunt, 3 B. & Ad. 798; R. *v.* Curvan, R. & M. C. C. R. 132; R. *v.* Bright, 4 C. & P. 387.

(*p*) Hawk. P. C. b. 1, c. 63, s. 21

sued (*q*). [Another aggravation is, when thereby the ministers of justice are disturbed in the due execution of their office; or where a respect to the particular place, ought to restrain and regulate men's behaviour more than in common ones, as in the court of the sovereign, and the like (*r*). And upon the same account also, all affrays in a church or churchyard, are esteemed very heinous offences; as being indignities to Him to whose service those places are consecrated. Therefore mere quarrelsome words, which are neither an affray nor an offence in any other place, are penal here. For it is enacted by statute 5 & 6 Edw. VI. c. 4 (*s*), that if any person shall —by words only—quarrel, chide, or brawl in a church or churchyard, the ordinary shall suspend him, if a layman, *ab ingressu ecclesiæ;* and, if a clerk in orders, from the ministration of his office during pleasure (*t*): and if any person in such church or churchyard proceeds to smite or lay violent hands upon another, he shall be excommunicated *ipso facto* (*u*).] And though these enactments are now, by 23 & 24 Vict. c. 32, s. 5, repealed as to brawling by a person not in holy orders, yet they are in other respects still in force (*x*). Two persons may be guilty of an affray; but

V. *Riots, routs, and unlawful assemblies,* all of which

(*q*) Vide sup. p. 78.

(*r*) Hawk. P. C. b. 1, c. 21, ss. 6, 10; c. 63, s. 23. As to striking and other outrage in the king's courts, &c., vide sup. p. 224.

(*s*) See also 1 W. & M. st. 1, c. 18, s. 18.

(*t*) As to this statute, see Cox *v.* Goodday, 2 Hagg. R. 139.

(*u*) Further provisions were made, by this statute, for the case of weapons being used or drawn in churches, &c.; but these were repealed by 9 Geo. 4, c. 31, s. 1.

(*x*) The 23 & 24 Vict. 32, also imposes a penalty to the extent of 5*l.*, (or imprisonment to the extent of two months,) on the offence of riotous, violent, or indecent behaviour by any person in any church or place of worship, or in any churchyard or burial-ground; and also on the offence of molesting, troubling, misusing, &c., any authorized preacher, or clergyman in holy orders, in his celebration of any divine service or office in any church, &c.

are misdemeanors (*y*), must have three persons at least to constitute them. 1. A *riot*, seems to be a tumultuous disturbance of the peace by three persons, or more, assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them, in the execution of some enterprise of a private nature; and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people,—whether the act intended were of itself lawful or unlawful (*z*). 2. A *rout*, seems to be a disturbance of the peace by persons assembling together with an intention to do a thing which, if it be executed, will make them riotous, and actually making a motion towards the execution thereof (*a*). 3. An *unlawful assembly*, seems to consist of any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the peace, and raise fears and jealousies among the subjects of the realm (*b*). The punishment of such riots as (the persons assembling not amounting to twelve or more) fall not under the Riot Act before referred to, is fine and imprisonment (*c*); to which hard labour may, (by 3 Geo. IV. c. 114,) be superadded. The same punishment, but without this addition, attaches to the offences of routs and unlawful assemblies. [And by the statute 13 Hen. IV. c. 7, any two justices, together with the sheriff or undersheriff of the county, may come with the *posse comitatus*, (if need be,) and suppress any such riot, assembly, or rout; arrest the rioters; and record, upon the spot, the nature and circumstances of the whole transaction; which record alone shall be a sufficient conviction of the offenders. In the interpretation of which statute it hath been holden, that all persons,

(*y*) Hawk. P. C. b. 1, c. 65; 1 Russ. 288.

(*z*) Hawk. P. C. b. 1, c. 66, s. 1; and see Cox *v.* Goodday, ubi sup.; 2 Hagg. R. 139.

(*a*) Hawk. P. C. b. 1, c. 65, s. 8.

(*b*) Ib. s. 9; and see 57 Geo. 3, c. 19, s. 23.

(*c*) As to the Riot Act, vide sup. p. 248.

[noblemen, and others, (except women, clergymen, persons decrepit, and infants under fifteen,) are bound to attend the justices in suppressing a riot, upon pain of fine and imprisonment (*d*); and that any battery, wounding, or killing the rioters, that may happen in suppressing the riot, is justifiable (*e*). So that our antient law, previous to the modern Riot Act, seems pretty well to have guarded against any violent breach of the peace; especially since any riotous assembly on a public or general account,—as to redress grievances, or to pull down all inclosures, and also resisting the Royal forces if sent to keep the peace,—may amount to overt acts of treason by levying war against the sovereign (*f*).

VI. Nearly related to this head of riots is the misdemeanor of *tumultuous petitioning*; which was carried to an enormous height, in the times preceding the grand rebellion. Wherefore by statute 13 Car. II. st. 1, c. 5, it was enacted, that not more than twenty names shall be signed to any petition to the Crown or either house of parliament for the alteration of matters established by law in Church or State: unless the contents thereof be previously approved, in the country, by three justices, or the majority of the grand jury at the assizes or quarter sessions; and, in London, by the lord mayor, aldermen, and common council (*g*): and that no petition shall be delivered by a company of more than ten persons. On pain, in either case, of incurring a penalty not exceeding 100*l.* and three months' imprisonment (*h*).]

(*d*) See R. *v.* Pinney, 3 B. & Ad. 946; R. *v.* Neale, 9 C. & P. 431; R. *v.* Brown, 1 Car. & M. 315.

(*e*) 1 Hale, P. C. 495; Hawk. P. C. b. 1, b. 65, s. 20.

(*f*) Vide sup. p. 157.

(*g*) This may be one reason, says Blackstone (vol. iv. p. 147), why the corporation of London has, since the Restoration, usually taken the lead in petitions to parliament for the alteration of any established law.

(*h*) At the trial of Lord George Gordon, it was held by the Court of Queen's Bench (see Dougl. Rep. 591), under the presidency of Lord Mansfield, that this statute of

Moreover, it is provided by 57 Geo. III. c. 19, s. 23, that it shall not be lawful for any person to convene, or give notice of convening, any meeting consisting of more than fifty persons, or for any number of persons exceeding the number of fifty, to meet in any street, square, or open space in the city or liberties of Westminster or county of Middlesex, within a distance of a mile from the gate of Westminster Hall, (except such parts of the parish of St. Paul's, Covent Garden, as are within such distance,)—for the purpose of considering of or preparing any petition, complaint, remonstrance, declaration or other address to both or either house of parliament for alteration of matters in Church or State,—on any day on which the two houses or either house of parliament shall meet and sit, or shall be summoned or adjourned or prorogued to meet or sit, nor on any day on which the courts shall sit in Westminster Hall. And any such meeting is by the Act made an *unlawful assembly* (*i*). But there is a provision that the enactment shall not apply to any meeting for the election of members to serve in parliament, nor to persons attending upon the business of either house of parliament, or any of the said courts (*k*).

VII. [A seventh offence against the peace is that of a *forcible entry* or *detainer;* which is committed by violently taking,—or, after an unlawful taking, violently keeping possession of—lands and tenements, with menaces, force and arms, and without the authority of

Charles was not affected by the declaration subsequently inserted into the Bill of Rights (1 W. & M. st. 2, c. 2), that "the subject has a right to petition, and that all commitments and prosecutions for such petitions are illegal." However, the provisions of the Act have not been enforced in modern times, though on the other hand, at a season of great public excitement, fresh, though temporary, prohibitions as to meetings, for deliberations on public questions, were made by 60 Geo. 3 & 1 Geo. 4, c. 6.

(*i*) As to what this term imports vide sup. p. 254.

(*k*) As to this Act, see 1 Russ. on Crimes, p. 280.

[law (*l*). A forcible entry was formerly allowable to every person disseised or turned out of possession, unless his entry was taken away or barred by his own neglect or other circumstances; but it is now,—as well as a forcible detainer,—a misdemeanor, punishable by fine and imprisonment (*m*).

VIII. The offence of *riding or going armed with dangerous or unusual weapons* is a misdemeanor, tending to disturb the peace, by terrifying the good people of the land; and it is particularly prohibited by the Statute of Northampton, (2 Edw. III. c. 3,) upon pain of forfeiture of the arms, and imprisonment during the pleasure of the Crown; in like manner as, by the laws of Solon, every Athenian was finable who walked about the city in armour (*n*).

IX. *Spreading false news*, to make discord between the sovereign and nobility, or concerning any great man of the realm, is also a misdemeanor, punishable by common law with fine and imprisonment (*o*); which is confirmed by statutes Westminster the first (3 Edw. I. c. 34); 2 Ric. II. st. 1, c. 5; and 12 Ric. II. c. 11.

X. *False and pretended prophecies*, with intent to disturb the peace, are equally unlawful and more penal, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. They are, therefore, punished by our laws as misdemeanors: and that upon the same principle that spreading of public news of any kind, without communicating it first to the magistrate, was prohibited by the antient Gauls (*p*). Such false and

(*l*) See R. *v.* Oakley, 4 Barn. & Adol. 30; R. *v.* Wilson, 3 Ad. & El. 817; 1 Russ. on Crimes, p. 340.

(*m*) See the statutes 5 Ric. 2, st. 1, c. 8; 15 Ric. 2, c. 2; 8 Hen. 6, c. 9; 31 Eliz. c. 11; 21 Jac. 1, c. 15.

(*n*) Pott. Antiq. b. 1, c. 26.

(*o*) 2 Inst. 226; 3 Inst. 198.

(*p*) "*Habent legibus sanctum, si quis quid de republicâ a finitimis rumore aut famâ acceperit, uti ad magistratum deferat, neve cum*

[pretended prophecies were punished capitally by 33 Hen. VIII. c. 14; which was however altered by the temporary Acts of 3 & 4 Edw. VI. c. 15, and 7 Edw. VI. c. 11 (*p*): and afterwards by the statute 5 Eliz. c. 15, the penalty for the first offence was a fine of ten pounds and one year's imprisonment; for the second, forfeiture of all goods and chattels and imprisonment during life (*q*).

XI. Besides actual breaches of the peace, any thing that tends to provoke or incite others to break it, is an offence of the same denomination. Therefore, *challenges to fight*, either by word or letter, or the bearing of such challenges, are misdemeanors, punishable by fine and imprisonment, according to the circumstances of the offence (*r*).]

XII. Another kind of misdemeanor, amounting in many instances to an incitement to break the peace, is the *publication of a libel.* Of *defamatory* libels we have already said so much in a former part of the work, as to preclude the necessity for any copious discussion of them on the present occasion. It may be right, however, to remark in this place, that, by the provisions of 6 & 7 Vict. c. 96 (*s*), it is enacted, that if any person shall publish or threaten to publish any libel, or directly or indirectly propose to abstain from printing or publishing, or offer to prevent the printing or publishing, of any matter touching any person, with intent to extort any money, security for money, or valuable thing from such person or any other; or with intent to induce any person

alio communicet; quod sæpe homines temerarios atque imperitos falsis rumoribus terreri, et ad facinus impelli, et de summis rebus consilium capere, cognitum est." —Cæs. de Bell. Gall. lib. 6, cap. 19.

(*p*) See Coleridge's Blackstone (vol. iv. p. 149), *in notis*, where Blackstone's statement on this subject is corrected.

(*q*) This statute was repealed as obsolete, in the year 1863.

(*r*) Hawk. P. C. b. 1, c. 63, ss. 3, 21.

(*s*) This Act is amended by 8 & 9 Vict. c. 75.

to confer or procure any appointment or office of profit or trust;—he shall be liable to imprisonment, with or without hard labour, for a term not exceeding three years (*t*). Also, that if any person shall maliciously publish any defamatory libel, knowing the same to be false, he shall be imprisoned for a term not exceeding two years, and pay such fine as the court shall award (*u*). And that if any person (though without such knowledge) shall maliciously publish any defamatory libel, he shall be liable to fine or imprisonment, or both, as the court shall award, such imprisonment not to exceed one year (*x*).

It is also necessary to observe, that besides defamatory libels, the term of libel legally includes such writings as are of a blasphemous, treasonable, seditious, or immoral kind; the publication of any of which is equally a misdemeanor, and subjects the person by whom it was composed, written, printed or published, to fine and imprisonment (*y*). And by 60 Geo. III. & 1 Geo. IV. c. 9, s. 16, it is enacted, that if a person charged with printing or publishing any blasphemous, seditious, or malicious libel, be brought up to give bail,—the court, judge, or justice of the peace, before whom he is so brought, may make it part of the condition of the recognizance that he shall be of good behaviour during the continuance of the recognizance. It is also provided by 60 Geo. III. & 1 Geo. IV. c. 8, as to libels of a blasphemous or seditious kind, that in every case in which any verdict or judgment by default shall be had against any person for composing, printing, or publishing the same,—the judge or court before whom such verdict shall have been given, may order the seizure and detaining of all copies thereof, which shall be in the possession of the person against whom such verdict was given; or in the possession of any other person for his use. And upon proper evidence being given

(*t*) 6 & 7 Vict. c. 96, s. 3.
(*u*) Sect. 4.
(*x*) Sect. 5.
(*y*) See 4 Bl. Com. p. 451, note by Christian.

of such possession, it shall be lawful for any justice of the peace, constable, or other peace officer, acting under such order, to search for such copies, in any house, building or place belonging to the person who shall be named in such order: and to enter therein (in the day time), by force, if admission be refused or unreasonably delayed.

[Under the Roman law libel considered as a criminal offence was treated, at certain periods, with more severity than with us. By the law of the Twelve Tables, libels which affected the reputation of another, were made a capital offence; but before the reign of Augustus, the punishment became corporal only (*z*). Under the Emperor Valentinian it was again made capital not only to write libels, but to publish or even to omit to destroy them (*a*). But our law, in this and many other respects, corresponds rather with the middle age of Roman jurisprudence, when liberty, learning and humanity were in their full vigour; and exhibits a moderation sufficient to protect it from any imputation of infringing the *liberty of the press*. This liberty, when rightly understood, consists in laying no *previous* restraints upon publications; not in freedom from censure for criminal matter, when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution (*b*), is to subject all freedom of senti-

(*z*) ——— "*Quinetiam lex Pœnaque lata, malo quæ nollet carmine quenquam Describi:—vertere modum formidine* fustis."—Hor. ad Aug. 152.

(*a*) Cod. 9, 36.

(*b*) The art of printing, soon after its introduction, was looked upon, as well in England as in other countries, as merely a matter of state, and subject to the coercion of the Crown. It was therefore regulated with us by the king's proclamations, prohibitions, charters of privilege and of licence, and, finally, by the decrees of the Court of Star Chamber, which limited the number of printers, and of presses which

[ment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government. But to punish, as the law does at present, any dangerous or offensive writings, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty.]

each should employ, and prohibited new publications unless previously approved by proper licensers. On the demolition of this odious jurisdiction in 1641, the long parliament of Charles the first, after their rupture with that prince, assumed the same powers as the Star Chamber exercised with respect to licensing books; and in 1643, 1647, 1649 and 1652, issued their ordinances for that purpose, founded principally on the Star Chamber decree of 1637. (See Scobell, i. 44, 134; ii. 88, 230.) In 1662 was passed the statute 13 & 14 Car. 2, c. 33, which, with some few alterations, was copied from the parliamentary ordinances. This Act expired in 1679, but was revived by statute 1 Jac. 2, c. 17, and continued till 1692. It was then continued for two years longer by statute 4 W. & M. c. 24; but though frequent attempts were made by government to revive it in the subsequent part of that reign (Com. Journ. 11 February, 1694, 26 November, 1695, 22 October, 1696, 9 February, 1697, 31 January, 1698), yet the parliament resisted it so strongly that it finally expired, and the press became properly free in 1694, and has ever since so continued.

CHAPTER XI.

OF OFFENCES AGAINST TRADE.

AMONG offences against trade, we shall notice, in the first place—

I. The offence of smuggling, that is, importing or exporting prohibited goods, or without paying the duties imposed on goods not prohibited (*a*). This practice is not only opposed to fair trading, (which gives it a place in the present chapter,) but is a fraud upon the revenue; and it is, accordingly, restrained by the statutes relating to the customs, of which we spoke in a former volume (*b*). And by one of these, the 16 & 17 Vict. c. 107 (called the Customs Consolidation Act, 1853,) it is provided, that if any goods liable to the payment of duties, shall be unshipped from any ship or boat in the united kingdom (customs or other duties not being first paid or secured): or if any prohibited goods be imported into any part of the united kingdom: or if any goods which have been warehoused in the united kingdom, shall be clandestinely or illegally removed: or if any goods prohibited to be exported shall be put on board for exportation, or with that object brought to any place in the united kingdom; or shall be found in any package produced to an officer of customs as containing goods not so prohibited: or if any goods subject to any duty or restriction in respect of importation, or prohibited to be imported, shall be found concealed on board ship

(*a*) According to Blackstone (vol. iv. p. 155), "smuggling" is the offence of importing goods without paying the duties imposed by the laws of customs or excise; but this is too narrow a definition.

(*b*) Vide sup. vol. II. p. 563.

within any port of the united kingdom,—then and in every of the foregoing cases all such goods shall be forfeited, together with any goods packed with or used in concealing them (*c*). By the same Act, it is further enacted, that every person concerned in importing or bringing into the united kingdom any uncustomed or prohibited goods, or in concealing the same, or in any manner dealing with goods liable to duties of customs with intent to defraud her Majesty thereof, shall, in each case, forfeit treble the value of the goods, or the penalty of 100*l.*, at the election of the commissioners of customs (*d*). Also, every person found on board a ship liable to forfeiture by any Act relating to the customs, under the circumstances mentioned in 16 & 17 Vict. c. 107, may, on conviction before a justice, be imprisoned, with hard labour, for the first offence for not less than six months, nor more than twelve; for a second, not less than nine, nor more than twelve months; and for any subsequent offence, for twelve months (*e*). Moreover, if any *three* or more persons, armed with offensive weapons, shall within the united kingdom or the limits of any port, harbour or creek thereof, be assembled in order to be aiding, or shall aid, in the illegal landing, running or carrying away of prohibited goods, or goods liable to duties not paid or secured; or in rescuing such goods after seizure; or in rescuing any person apprehended for any offence made felony by any Act relating to the customs; or in preventing the apprehension of any person guilty of such felony,—every person so offending, and every person assisting or abetting therein, shall be guilty of *felony:* and he may be sentenced to penal servitude for life, or not less than fifteen years, or to be imprisoned for not exceeding three years (*f*). And any person who shall maliciously shoot at any vessel or boat belonging to the navy or in the service of the revenue, within one hundred leagues of the coast of the

(*c*) 16 & 17 Vict. c. 107, s. 209.
(*d*) Sect. 232.
(*e*) Sect. 235.
(*f*) Sect. 248; 20 & 21 Vict. c. 3.

united kingdom; or shall maliciously shoot at, maim, or dangerously wound any full pay officer of the army, navy or marines, or any officer of customs or excise, or those aiding them, while duly employed for the prevention of smuggling and in the execution of his or their duty—shall be guilty of felony; and such offender, also, may be sentenced to the punishments last particularized (*f*). So, if any person, (being in company with more than *four* other persons,) be found with any goods liable to forfeiture under any Act relative to the customs or excise; or be found (in company with any other person and within five miles of the coast, or of any tidal river) carrying offensive arms or weapons, or disguised in any way—he shall be adjudged guilty of felony; and he may be sentenced to penal servitude for not more than seven nor less than five years (*g*). And, finally, persons assaulting or obstructing any such officers as above mentioned (or their assistants) in the performance of their duty, by force or violence (though not made guilty of felony), may be sentenced to the same term of penal servitude, or to imprisonment, with hard labour, for not more than three years (*h*).

II. Among the offences against trade, must also be numbered those fraudulent practices which are provided against by the Debtors Act, 1869, in relation to the law of *Bankruptcy*. Of these, however, we have taken such note as seemed necessary in a former part of the work, when engaged on that branch of the law; and it will be unnecessary to recapitulate them in this place (*i*).

III. [*Cheating* is another offence, more immediately

(*f*) 16 & 17 Vict. c. 107, s. 249.

(*g*) Sect. 250; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47.

(*h*) 16 & 17 Vict. c. 107, s. 251; 20 & 21 Vict. c. 3. By 19 & 20 Vict. c. 75, s. 3, there is a penalty of 10*l.* attached to the offence of wilfully destroying or injuring any buoy or mark used in the Preventive Service, or for the purposes of the Customs.

(*i*) Vide sup. vol. II. p. 159.

[against trade; which cannot be carried on without a punctilious regard to common honesty, and faith between man and man. Hither, therefore, may be referred that prodigious multitude of statutes, which are made to restrain and punish deceits in particular businesses, and which are enumerated by Hawkins and Burn, but are chiefly of use among the traders themselves (*k*). The offence of selling articles, knowing any trade marks thereon to be counterfeited, is reducible to the head of cheating (*l*); as is likewise, in a peculiar manner, the offence of *selling by false weights and measures*, the standard of which has already fallen under our consideration (*m*). The general punishment for all cheating which is indictable at common law (*n*), is by fine and imprisonment (*o*);] to which, by 14 & 15 Vict. c. 100, s. 29, hard labour may now be added; though, if the cheating be in contravention of some special enactment, the easier and more usual way is by levying on a summary conviction, by way of distress

(*k*) By 19 & 20 Vict. c. 114, provisions are made "to prevent false packing and other frauds in the *hay and straw* trade," which trade is regulated by 36 Geo. 3, c. 88. We may also notice here, that Blackstone (vol. iv. p. 157) mentions the offence of *breaking the assize of bread*,—that is, violating the rules laid down by several statutes for regulation of its price, viz., 51 Hen. 3, st. 1 and 6; ord. pistor. 2 & 3 Edw. 6, c. 15; 31 Geo. 2, c. 29. But all statutes relating to the assize are repealed by 6 & 7 Will. 4, c. 37, and (as to the city of London) by 3 Geo. 4, c. cvi.,—which contain new regulations as to the bread trade. It may be observed that by 34 & 35 Vict. c. 96, *pedlars* (who sell their wares by travelling about from place to place) are required to take out certificates before they can exercise their calling, which must be annually renewed.

(*l*) Vide sup. p. 145. The penalty imposed for this species of cheating, is the forfeiture of the value of the articles, and an additional sum to the extent of 5*l*. (25 & 26 Vict. c. 88, s. 4.) The adulteration of articles of *food and drink*, seems more especially an offence against the *public health*, and is noticed accordingly, post, p. 269.

(*m*) Vide sup. vol. II. p. 516.

(*n*) As to what cheating in *matters of trade* is indictable or otherwise, at the common law, see Rex *v.* Wheatley, 2 Burr. 1128; Rex *v.* Dixon, 3 M. & S. 11; Rex *v.* Haynes, 4 M. & S. 214; 2 Russ. on Crimes, bk. iv. c. 31, s. 1.

(*o*) See R. *v.* Treve, 2 East, P. C. 821; R. *v.* Dixon, ubi sup.; R. *v.* Haynes, ubi sup.

and sale, the forfeiture imposed by the particular Act of parliament.

IV. [A *monopoly* is a licence or privilege allowed by the sovereign for the sole buying and selling, making, working, or using of any thing whatsoever; whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before (*p*). These monopolies had been carried to an enormous height during the reign of Queen Elizabeth, and were heavily complained of by Sir E. Coke, in the beginning of the reign of James the first (*q*);] but were in great measure remedied by statute 21 Jac. I. c. 3, which declared such monopolies to be contrary to law and void;—except as to patents to the authors of new inventions, and except also patents concerning printing, saltpetre, gunpowder, great ordnance and shot;—and monopolists were made punishable with the forfeiture of damages to those whom they attempted to disturb. And if they procured any action, brought against them for these damages, to be stayed by any extra-judicial order, other than that of the court wherein it was brought, they were made liable to the penalties of a *præmunire* (*r*).

(*p*) Vide sup. vol. II. p. 25. The offences of *forestalling the market*, *regrating* and *engrossing*, (with many other statutes in restraint of trade,) were abolished by 7 & 8 Vict. c. 24. The offence of *forestalling* the market, consisted in buying the merchandize on its way to market, or dissuading persons to bring their goods there, or persuading them to enhance the price when there. That of *regrating*, consisted in buying corn, &c. in any market, and selling in again in or near the same place. That of *engrossing*, was getting into one's possession or buying up large quantities of corn, &c., with intent to sell them again. We may also here allude to two other offences mentioned by Blackstone (vol. iv. pp. 154, 156). The first of these is that of *owling*, or the offence of transporting wool or sheep out of the kingdom; which, (with all other offences relating to the exportation of wool or sheep,) was abolished by the effect of 5 Geo. 4, c. 47. The other is that of *usury;* as to the history of which, vide sup. vol. II. p. 90.

(*q*) 3 Inst. 181.

(*r*) As to a *præmunire*, vide sup. p. 168 et seq. It was formerly an offence *to transport and seduce our*

V. We may also here mention some provisions which have been made against *assaulting or otherwise molesting* persons engaged in the exercise of certain trades. For by 24 & 25 Vict. c. 100, s. 39, whosoever shall use or threaten any violence to any person in order to deter or hinder him from selling or disposing of wheat or other grain, flour, meal, malt, or potatoes, in any market or other place: or shall use or threaten violence to any person in charge or having care of its carriage, with intent to stop the same;—or who shall unlawfully and with force hinder any seaman, keelman, or caster from exercising his lawful trade or occupation; or shall beat or use violence to any such person with intent to prevent him from so working—may, on being summarily convicted before two justices, be imprisoned and kept to hard labour for three months (*s*).

artists to settle abroad, or even *to export any tools or utensils used in certain manufactures*. And both of these are classed by Blackstone (vol. iv. p. 160), as offences against trade. But as restrictions upon trade, such offences are now removed. (See 5 Geo. 4, c. 97, and 6 & 7 Will. 4, c. 52.)

(*s*) 24 & 25 Vict. c. 100, s. 40. See also the enactments against obstruction or molestation of workmen, contained in 34 & 35 Vict. c. 32, mentioned sup. p. 241.

CHAPTER XII.

OF OFFENCES AGAINST THE PUBLIC HEALTH, POLICE, OR ECONOMY.

THE nature of the offences indicated by the title of this chapter, so far as they regard the public health, will be readily conceived; but it may be necessary to remark, that by offences against the public police and economy, we mean those committed against the due regulations and domestic order of the kingdom; whereby the individuals of the State, like the members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners; and to be decent, industrious and inoffensive in their respective stations. This head of offences (some of which are felonious, some indictable misdemeanors, and others punishable only by pecuniary penalties,) must therefore be very miscellaneous, and a selection of them can only be here attempted; inasmuch as the class comprises all such crimes as especially affect public society, and yet are not comprehended under any of the preceding species.

I. We shall mention first, under the present head, certain fraudulent practices contrary to the plain rules of honesty, but still falling short of felony. One of these is the *sale of unwholesome provisions.* [To prevent this the statute 51 Hen. III. st. 6, prohibited the sale of contagious or unwholesome *flesh*, or flesh bought of a Jew—under pain of amercement, fine and imprisonment, and abjuration of the town, according to the frequency of the

[offence (*a*). By the statute 12 Car. II. c. 25, s. 11, any adulteration of *wine* was made punishable with the forfeiture of 100*l.* if done by the wholesale merchant, and 40*l.* if done by the vintner or retail trader; on which subject, additional regulations were made by 1 Will. & M. st. 1, c. 34, s. 20.] By 3 Geo. IV. c. cvi. and 6 & 7 Will. IV. c. 37, special provisions were made against the adulteration of *bread, corn, meal* or *flour* (*b*). By 11 & 12 Vict. c. 107, heavy penalties were imposed upon such as expose, or offer for sale, in any market or other public place, any *meat* unfit for human food. And now the 23 & 24 Vict. c. 84, and the 35 & 36 Vict. c. 74, provide generally that every person who shall sell any article of food or drink or any drug with which, to his knowledge, any ingredient or material injurious to the health of persons eating or drinking such article has been mixed, or who shall sell as pure and unadulterated any such article which is impure or adulterated, may be fined 20*l.* and costs on a summary conviction before two justices—and on a second offence, the justices may cause the offender's name and address, and the offence he has committed, to be published in the newspapers, or made known to the public in such other way as may seem desirable (*c*).

Other species of deceitful practices, contravening the law of honesty, have been incidentally noticed in former

(*a*) See as to this, Burnby *v.* Bollett, 16 Mee. & W. 644.

(*b*) See also 32 & 33 Vict. c. 112, as to the adulteration of *seeds*. As to 6 & 7 Will. 4, c. 37, see Jones *v.* Huxtable, Law Rep., 2 Q. B. 460; The Queen *v.* Wood, Law Rep., 4 Q. B. 354; Hill, app., Browning, resp., ib. 5 Q. B. 453. We are told by Blackstone (vol. iv. p. 168), that the punishment of *bakers* for offences relating to bread was antiently to stand in the pillory; and for *brewers*, for offences relating to beer, to stand in the tumbrel, or dung cart, "which, as we learn from "Domesday Book, was the punish-"ment for knavish brewers in the "city of Chester, so early as the "reign of Edward the Confessor: "'*Malam cervisiam faciens, in* "*cathedrâ ponebatur stercoris.*'"

(*c*) These Acts also provide for the appointment of *analysts*, by whom any articles of food or drink may be tested.

parts of this work—as, for example, that of obtaining property by personation, or by false pretences (*d*). And our limits will not allow us to pursue the subject in the present place, further than to add the following instance. If any person shall personate a master and give a false character to a servant; or assert in writing, contrary to truth, that any servant has been hired for a period of time or in a station, or was discharged at any time, or had not been hired in any previous service; or if any person shall offer himself or herself as a servant, pretending to have served where he or she has not served, or with a false certificate of character, or shall alter a certificate, or shall, contrary to truth, pretend not to have been in any previous service; the offenders, in any of the above cases, are liable, under 32 Geo. III. c. 56, on conviction before two justices of the peace, to be fined twenty pounds; and in default thereof to be imprisoned with hard labour, for any time not more than three months nor less than one calendar month.

II. A *common nuisance* is an offence against the public order and economical regimen of the State; and it consists in either doing a thing to the annoyance of all the lieges, or neglecting to do some good which the common welfare requires (*e*). Common nuisances are of the class of misdemeanors; and are distinguishable from *private* nuisances, as being a grievance to the community at large, and not merely to particular persons. Of the nature of common nuisances are—1. Annoyances in *highways* and *bridges*. Offences in respect of *highways* and *bridges* may be committed—as we have had occasion elsewhere to notice,—either positively, by actual obstructions, or negatively, by want of reparations. The latter, or negative, kind of offences, can of course only be com-

(*d*) Vide sup. p. 146. (*e*) Hawk. P. C. b. 1, c. 75, s. 1.

mitted by those upon whom an obligation lies to keep them in repair. But the positive offences against highways and bridges, consist of a variety of nuisances and other injuries capable of being committed by any person indiscriminately (*f*); some of which are punishable at common law, and others by the express provisions of the highway, bridge and turnpike Acts (*g*). 2. The carrying on of *offensive* or *dangerous trades* or *manufactures* (*h*). Such carrying on, when occasioning injury to any private individual, may form the subject of an action at his suit; but when it is detrimental to the public at large, it is punishable by fine and imprisonment; and it may be remarked, that to support an indictment for these nuisances, it is not necessary to prove that they are offensive to health, if manifestly offensive to the senses (*i*). 3. *Exposing*, in a public thoroughfare, a *person infected with a contagious disease*, is a common nuisance, and punishable by fine and imprisonment (*k*). 4. All *disorderly inns or other houses* (*l*); *bawdy houses* (*m*); *gaming houses; play houses*

(*f*) When there is a house erected, or an inclosure made, upon any part of the royal demesnes, or of a highway or common street or public water or such like public things,—the proper and antient name for such a nuisance is a *purpresture;* from the French word *pourpris*, an inclosure. (See 4 Bl. Com. p. 167, citing Co. Litt. 277.)

(*g*) As to nuisances to highways, see 5 & 6 Will. 4, c. 50; 4 & 5 Vict. cc. 51, 59; 8 & 9 Vict. c. 71; 11 & 12 Vict. c. 123; 25 & 26 Vict. c. 61. As to nuisances to turnpike roads, see 3 Geo. 4, c. 126; 4 Geo. 4, c. 95; 4 & 5 Vict. cc. 33, 51. As to nuisances to bridges, see 55 Geo. 3, c. 143. As to a *felonious* destruction or damage to bridges, turnpike gates, &c., vide sup. p. 140.

(*h*) See 1 & 2 Geo. 4, c. 41, as to the negligent use of furnaces or steam engines.

(*i*) Rex *v.* Neil, 2 C. & P. 485.

(*k*) See Rex *v.* Vantandillo, 4 M. & S. 73.

(*l*) We may remark here, that an inn,—being intended for the lodging and receipt of travellers,—may be indicted, suppressed, and the innkeeper fined, if a traveller be refused entertainment by him without a very sufficient cause: for thus to frustrate the end of its institution is held to be disorderly behaviour; and therefore punishable as an offence, besides exposing the landlord to be sued for damages. (See Hawk. P. C. b. 1, c. 78, s. 2; Bull. N. P. 73; Bennet *v.* Mellor, 5 T. R. 273; Fell *v.* Knight, 8 Mee. & W. 269.)

(*m*) See 25 Geo. 2, c. 36, s. 5.

unlicensed or *improperly conducted; unlicensed booths and stages for rope dancers and mountebanks* (*o*); and the like,—are either at common law, or by statute, public nuisances; and may, upon indictment, be suppressed and fined (*p*); and their keepers, in some cases, imprisoned with hard labour (*q*). Against *gaming houses*, in particular, the efforts of the legislature have been directed with assiduous care. Thus the statute 33 Hen. VIII. c. 9, s. 11, prohibited the keeping any common house for dice, cards, or any "unlawful games," under pecuniary penalties of 40*s.* for every day of so keeping the house, and 6*s.* 8*d.* for every time of playing therein (*r*). Also, by 9 Ann. c. 14, 2 Geo. II. c. 28, 13 Geo. II. c. 19, and 18 Geo. II. c. 34,—the particular games of faro, basset, ace of hearts, hazard, passage, roly poly and roulette; and all other games with dice, except backgammon;—were prohibited under a penalty of 200*l.* for him that should erect the same, and 50*l.* a time for the players (*s*). And now by 8 & 9 Vict. c. 109 (*t*), 16 & 17 Vict. c. 119, and 17 & 18 Vict. c. 38,

(*o*) Bac. Ab. tit. Nuisances. But by 6 & 7 Vict. c. 68, s. 23, theatrical representations in booths, or shows at fairs or feasts, &c., are lawful, when allowed by the local authorities.

(*p*) By 22 & 23 Vict. c. 17, and 30 & 31 Vict. c. 35, s. 1, before an indictment for keeping a disorderly house can be presented to or found by the grand jury, security must, in some cases, be given for the due prosecution of the charge.

(*q*) See 3 Geo. 4, c. 114.

(*r*) By 8 & 9 Vict. c. 109, s. 1, so much of 33 Hen. 8, c. 9, is repealed as prohibits *bowling*, *tennis* or other games of mere skill. As to the game of *billiards*, it is a lawful amusement; but, when played in public, it is placed by the Act of 8 & 9 Vict. under certain restrictions —keepers of public billiard tables, bagatelle boards, and similar instruments, being required to be licensed by the justices at their general annual licensing meeting; and such keepers being forbidden, under heavy penalties, to allow play between the hours of one and eight on any day, or at any hour on a Sunday, Christmas Day, Good Friday, or day of public fast or thanksgiving. (8 & 9 Vict. c. 109, s. 10.)

(*s*) See also 30 Geo. 2, c. 24, s. 14, prohibiting, under a pecuniary penalty, gaming in public houses by labourers or servants. As to the offence of *gaming in a public place*, see also 5 Geo. 4, c. 83; In re Freestone, 1 H. & N. 93.

(*t*) This Act repeals a previous Act against fraudulent and excessive Gaming, 16 Car. 2, c. 7; and

further provisions are made for the punishment of those who keep or frequent *common gaming houses* (*u*); and for the suppression of such houses, when discovered to exist (*x*). By these statutes it is provided (*y*), that the owner or keeper of any common gaming house, and every person having the care or management thereof,—and every banker, croupier, and other person in any manner conducting the business of any such house,—shall, on conviction by the oath of one witness, before two justices of the peace, be liable, in addition to the penalties of 33 Hen. VIII., to pay such penalty (not being more than 500*l.*) as shall be adjudged by such justices: or, in the discretion of such justices, to be committed to the house of correction, with or without hard labour, for not more than twelve calendar months (*z*). It is also enacted, by these statutes, that every person who shall have been concerned in any unlawful gaming, but who,—on being examined as a witness before any justice of the peace, or on the trial of any indictment or information against the owner, or keeper, or person having the care of any common gaming house, touching such unlawful gaming,—shall make true dis-

also so much of 9 Ann. c. 14, and 18 Geo. 2, c. 34, as relates to the offence of losing or winning to a certain amount. See also the temporary Acts, 7 & 8 Vict. cc. 3, 58. As to the different games that have been decided to fall within the prohibition contained in one or other of the Acts referred to in the text, see Goodburn *v.* Morley, 2 Stra. 1159; Jeffreys *v.* Walter, 1 Wils. 220; Lynall *v.* Longbotham, 2 Wils. 36; Hodson *v.* Terhill, 2 Tyrw. 929; Bentinck *v.* Connop, 5 Q. B. 693; Daintree *v.* Hutchinson, 10 Mee. & W. 85; Applegarth *v.* Colley, ibid. 723; Foot *v.* Baker, 5 Man. & G. 338.

(*u*) By 16 & 17 Vict. c. 119, *betting houses* are declared to be common gaming houses. (See Shaw *v.* Morley, Law Rep., 3 Exch. 137.)

(*x*) By 8 & 9 Vict. c. 109, ss. 2, 5, 8, provisions are made as to what shall be deemed sufficient evidence of keeping a common gaming house, or of gaming.

(*y*) Besides the above statutes, provisions against gaming houses are also contained in the following Acts: 31 Eliz. c. 5; 25 Geo. 2, c. 36; 42 Geo. 3, c. 119; 2 & 3 Vict. c. 47.

(*z*) 8 & 9 Vict. c. 109, s. 4; (and see 17 & 18 Vict. c. 38, s. 4.) But by 22 & 23 Vict. c. 17, and 30 & 31 Vict. c. 35, s. 1, before an indictment for keeping a gambling house shall be presented to or found by the grand jury, security must, in certain cases, be given for the due prosecution of the charge.

covery thereof to the best of his knowledge, shall be entitled to receive from the court, a certificate of his having done so; and shall be thereupon freed from all criminal prosecutions, forfeitures, and disabilities for any thing done in respect of the unlawful gaming in which he was so concerned (*d*). But, on the other hand, that any person found in any house, room or place legally entered by the police, under a warrant, as a suspected gaming place (*e*), may be *required* to be examined and to give evidence touching any unlawful gaming therein, or touching any obstructions to the entry; and shall not be excused from being examined or from answering any question put to him touching such matters, on the ground that his evidence will tend to criminate himself (*f*). And further, that every person who shall by any fraud, unlawful device, or ill practice,—in play, betting, or wagering, at any game,—win any sum of money or valuable thing, shall be deemed guilty of obtaining the same by a *false pretence*, and be punished accordingly (*g*); and that all contracts, (whether by parol or in writing,) by way of gaming or wagering, shall be null and void (*h*); and that no suit at law or in equity, shall be brought to recover from a stakeholder a deposit on a wager (*i*). There is, however, a proviso, that this last enactment shall not be deemed to apply to any subscription towards a plate or prize at any lawful game, sport, pastime, or exercise (*k*). Lastly, it is now

(*d*) 8 & 9 Vict. c. 109, s. 9.

(*e*) Heavy pecuniary penalties are laid by 8 & 9 Vict. c. 109, and 17 & 18 Vict. c. 38, on such as unlawfully obstruct the authorized entrance of the police into suspected houses; or who, being there found, give false names or addresses.

(*f*) 17 & 18 Vict. c. 38, s. 5.

(*g*) 8 & 9 Vict. c. 109, s. 17. As to obtaining money by false pretences, vide sup. p. 146.

(*h*) 8 & 9 Vict. c. 109, s. 18; see Applegarth *v.* Colley, 10 Mee. & W. 723; Gatty *v.* Field, 9 Q. B. 431; Rosewarne *v.* Billing, 15 C. B., N. S. 316; Bubb *v.* Yelverton, Law Rep., 9 Eq. Ca. 471. See also 5 & 6 Will. 4, c. 41 (amending 9 Ann. c. 14), and Hay *v.* Ayling, 20 L. J. (Q. B.) 171, as to notes, bills, or mortgages, given for money won at play.

(*i*) As to this provision, see Varney *v.* Hickman, 5 C. B. 271.

(*k*) As to *horse racing* for a plate or prize, it may be observed that it does not itself fall under any prohi-

also provided by 36 & 37 Vict. c. 38, s. 3, that every person playing or betting by way of wagering or gaming *in any street, road, highway*, or *other open and public place*, or in any open place to which the public have access (*l*); at or with any table or instrument of gaming, or any card, coin, token, or other article used as an instrument of wagering at any game or pretended game of chance, shall be deemed a rogue and vagabond under the statute 5 Geo. IV. c. 83, and be liable to be convicted and punished accordingly; or else, at the discretion of the justices trying the case, in lieu thereof may be adjudged to pay a penalty not exceeding forty shillings for the first offence nor five pounds for any subsequent one (*m*). 5. By statute 10 & 11 Will. III. c. 17, all *lotteries* are declared to be public nuisances; and all grants, patents, or licences for the same, to be contrary to law (*n*); and by 12 Geo. II. c. 28, 13 Geo. II. c. 19, and 18 Geo. II. c. 34, all private lotteries by tickets, cards, or dice, are specifically prohibited. State lotteries, however, were, from time to time, authorized by successive Acts of parliament, until the 4 Geo. IV. c. 60, since which Act this method of raising money for the public service has been discontinued. 6. To this head we may also refer the offences of *making*, *keeping*, or *carrying* too large a quantity of *gunpowder* at one time, or in one place or vehicle (*o*); and of *using mills* or *engines* for making gunpowder, except in places duly

bitory enactment. For though by 12 Geo. 2, c. 19, no stakes or matches at horse races under 50*l.* value could be run under penalty of 200*l*, this enactment was repealed by 3 & 4 Vict. c. 5. But as to *bets* on horse racing, see Coombes *v.* Dibble, Law Rep., 1 Exch. 248. As to a *coursing match*, see Daintree *v.* Hutchinson, 10 Mee. & W. 85. As to a *foot race*, see Batty *v.* Marriott, 5 C. B. 817.

(*l*) See Hirst *v.* Molesbury, Law Rep., 6 Q. B. 130; Tollett *v.* Thomas, ib. 514.

(*m*) This Act repeals the Vagrant Act, 1863 (31 & 32 Vict. c. 52). As to the Vagrant Act, vide post, p. 287.

(*n*) See however 9 & 10 Vict. c. 48, legalizing *Art Unions* for the disposal of works of art by way of prizes.

(*o*) See R. *v.* Taylor, 2 Stra. 1167; R. *v.* Matters, 1 B. & Ald. 362.

licensed (*p*);—and all of these practices are prohibited by the 23 & 24 Vict. c. 139 (*q*),—amended by 24 & 25 Vict. c. 130, and 25 & 26 Vict. c. 98,—under heavy penalties and forfeitures (*r*). And the Acts last mentioned also require the manufacture of all *fireworks*, and of other preparations or compositions of an explosive nature, to be carried on in licensed places; and moreover prohibit, under a penalty, the sale of fireworks by persons unlicensed, or to any person apparently under the age of sixteen (*s*). The Acts also declare that if a squib or other firework be thrown or fired in any thoroughfare or public place, the offender shall be liable to a penalty of 5*l.* (*t*). 7. *Eaves-dropping*,—or the offence committed by such as loiter under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales,—is a common nuisance; and the offenders are indictable at sessions, and are liable to be fined and bound over to their good behaviour (*u*). 8. [Lastly, we must enumerate among nuisances noticed in our law, (though in practice it has long ceased to be the subject of prosecution,) that of being a *common scold*. For which offence the *communis rixatrix*, (for our law confines it to the feminine gender,) might

(*p*) By 25 & 26 Vict. c. 66, regulations of a similar description are made with respect to the carriage by sea, or deposit, of a highly inflammable substance called *petroleum*; and by 29 & 30 Vict. c. 69, s. 8, most of the provisions of the Petroleum Act are made to apply also to *nitro-glycerine*. As to which see 32 & 33 Vict. c. 113; 34 & 35 Vict. c. 105; 36 & 37 Vict. c. 75; Beck *v.* Stringer, Law Rep., 6 Q. B. 497; Jones *v.* Cook, ib. 505. (See also sup. vol. II. p. 86.)

(*q*) See Biggs *v.* Mitchell, 2 B. & Smith, 523.

(*r*) See also 54 Geo. 3, c. 159, s. 6; 14 & 15 Vict. c. 67. As to the seizure of gunpowder, see 3 & 4 Will. 4, c. 19, s. 36; 2 & 3 Vict. c. 47, s. 35; 9 & 10 Vict. c. 25. As to the manufacture of fire-arms, 53 Geo. 3, c. 115. As to public nuisances arising from the keeping or using of dangerous materials generally, or from practising dangerous games, see Williams *v.* East India Company, 3 East, 200, 201; R. *v.* Moore, 3 B. & Ad. 184.

(*s*) See Bliss, app., Lilley, resp., 3 B. & Smith, 128.

(*t*) See 2 & 3 Vict. c. 47, s. 4, and The Queen *v.* Bennett, 28 L. J. (M. C.) 27, as to this offence within the *metropolitan* district.

(*u*) 4 Bl. Com. p. 168.

[be indicted (*x*); and, if convicted, she might be sentenced to be placed in a certain engine of correction called the trebucket, castigatory, or *cucking* stool; which, in the Saxon language, is said to signify the scolding stool; though now it is frequently corrupted into *ducking* stool; because the residue of the judgment was, that, when so placed therein, she should be plunged in the water for her punishment (*y*).]

Such is the general state of the law, with respect to common nuisances; but it is material to add here that, as to all those species of them which tend to affect the *public health*, they are now very specially provided against by the several Acts for improving the sanatory condition of the people,—and amongst these we may particularize the Public Health Act, 1848 (11 & 12 Vict. c. 63), the Local Government Acts, 1858 and 1861 (21 & 22 Vict. c. 98, and 24 & 25 Vict. c. 61); the Diseases Prevention Act, 1855 (18 & 19 Vict. c. 116); the Nuisances Removal Act for England, 1855 (18 & 19 Vict. c. 121); and the Public Health Act, 1872 (35 & 36 Vict. c. 79). By the provisions of these Acts respectively, and of those passed for their amendment, a great variety of nuisances are specified and prohibited, under the penalties of misdemeanor in some instances, and in others under pecuniary penalties recoverable before the justices of the peace.

III. [We shall next notice that offence with regard to the holy estate of matrimony, which is called *bigamy* (*z*);

(*x*) R. v. Foxby, 6 Mod. 213.

(*y*) Hawk. P. C. b. 1, c. 75, s. 5; 3 Inst. 219.

(*z*) It may be incidentally observed here that "bigamy," according to the canonists, consisted in marrying two virgins successively, one after the death of the other; or in once marrying a widow. Such were esteemed incapable of orders, &c.; and by a canon of the council of Lyons, A.D. 1274, held under Pope Gregory the tenth, were "*omni privilegio clericali nudati, et coërcioni fori secularis addicti.*"—(6 Decretal. l. 12.) This canon was adopted and explained in England by 4 Edw. 1, st. 3, c. 5; and *bigamy* thereupon became no uncommon counterplea to the claim of benefit of clergy. (M. 40 Edw. 3, 42; M. 11 Hen. 4, 11, 48; M. 13 Hen. 4, 6; Staundf. P. C.

[and this consists of a second marriage (*a*), having a former husband or wife still living (*b*). Such second marriage is simply void, and a mere nullity, by the ecclesiastical law of England (*c*): and yet the legislature has thought it just to make it felony; by reason of its being so great a violation of the public economy and decency of a well-ordered State. For polygamy can never be endured under any rational civil establishment, whatever specious reasons may be urged for it by the eastern nations; the fallaciousness of which has been fully proved by many sensible writers; but in northern countries, the very nature of the climate seems to reclaim against it;—it never having obtained in this part of the world, even from the time of our German ancestors, who, as Tacitus informs us, "*prope soli barbarorum, singulis uxoribus contenti sunt*" (*d*).] And with us in England, it is enacted by 24 & 25 Vict. c.

134.) The cognizance of the plea of *bigamy* was declared by stat. 18 Edw. 3, st. 3, c. 2, to belong to the court christian, like that of *bastardy*. But by stat. 1 Edw. 6, c. 12, s. 16, *bigamy* was declared to be no longer an impediment to the claim of clergy. See Dal. 21; Dy. 201. As to benefit of clergy, vide post, c. XXIII.

(*a*) Blackstone says (vol. iv. p. 163) that the offence of bigamy "is more justly denominated *poly-*"*gamy*, or having a plurality of "wives at once:" and he objects to the term bigamy as corruptly applied to the case; because it "pro-"perly signifies being twice mar-"ried." The correctness of this criticism, however, seems questionable. For whatever the number of marriages that may have taken place, the substance of the charge always is, that, having a lawful wife, (or husband,) still living, the offender marries a *second* time;—any intervening marriage being wholly immaterial and out of the case so far as the prosecution is concerned.

(*b*) 3 Inst. 88. It is to be observed, that, for the purposes of the 20 & 21 Vict. c. 85, "to amend "the law relating to divorce and "matrimonial causes in England," the term "bigamy" is to be taken to mean "the marriage of any per-"son being married, to any other "person during the life of the "former husband or wife, whether "the second marriage shall have "taken place within the dominions "of her Majesty, or elsewhere."

(*c*) It has recently been held in the court of divorce that cohabitation in a country where polygamy is lawful between those who profess a faith which allows of polygamy, is not a *marriage* such as will be recognized in the English courts. See Hyde *v.* Hyde and Woodmansee, Law Rep., 1 P. & D. 130.

(*d*) De Mor. Germ. 18.

100 (*e*), that whosoever, being married, shall marry any other person during the life of the former husband or wife, (whether the second marriage shall have taken place in England, Ireland or elsewhere,) shall be guilty of felony; and is liable to penal servitude for not more than seven nor less than five years, or to be imprisoned with or without hard labour, for not more than two years (*f*). It is to be observed, however, that the first wife, in this case, shall not be admitted as a witness against her husband, because she is the true wife; though the second may, because she is indeed no wife at all (*g*); and so *vice versâ* of a second husband: and it is held necessary to prove that the first marriage was duly solemnized; mere proof of cohabitation not being sufficient (*h*). Moreover, the above enactment does not extend to the following cases (*i*). 1. That of a second marriage contracted out of England or Ireland, by any other than a subject of Her Majesty (*k*). 2. That of a person marrying a second time, whose husband or wife shall have been continually absent for the space of seven years immediately preceding the second marriage, and shall not have been known by such person to be living within that time (*l*). 3. That of a person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage.

(*e*) This statute describes itself, in its title, as one relating to offences against the *person*. But bigamy is classed by Blackstone (and the classification has been followed in the present work) as an offence against the public police or economy—to which division it seems properly to belong, in so far at least as the purposes of the student are concerned.

(*f*) 24 & 25 Vict. c. 100, s. 57. (See 27 & 28 Vict. c. 47.) The offender may also, if the court see fit, be bound over with sureties to keep the peace (sect. 71).

(*g*) 1 Hale, P. C. 693; 1 East, P. C. c. 12, s. 9; Peat's case, 2 Lewin, 288.

(*h*) See R. *v.* James, R. R. C. C. 17; R. *v.* Morton, ibid. 19; R. *v.* Butler, ibid. 61; R. *v.* Bowen, 2 C. & K. 227.

(*i*) 24 & 25 Vict. c. 100, s. 57.

(*k*) As to this exception, see Topping's case, 1 Dearsley's C. C. R. 647.

(*l*) See The Queen *v.* Briggs, 26 L. J. (M. C.) 7; The Queen *v.* John Curgerwen, Law Rep., 1 C. C. 1.

4. That of a person whose former marriage shall have been declared void, by the sentence of any court of competent jurisdiction (*o*). In reference, however, to the second of these cases, it is to be observed that the second marriage is, under the circumstances referred to, a ***nullity***, although it be attended with no penal consequences.

IV. [*Lewdness* is also an offence against the public economy, when of an open and notorious character; as by frequenting houses of ill-fame, which is an indictable offence; or by some grossly scandalous and public indecency; for which the punishment at common law was fine and imprisonment. And in the year 1650, when the republican party had the ascendant, the repeated act of keeping a brothel, or committing fornication, was, upon a second conviction, made felony without benefit of clergy (*p*). But at the Restoration, when men, from an abhorrence of what they deemed the hypocrisy of the late times, fell into a contrary extreme of licentiousness, it was not thought proper to renew a law of such unfashionable rigour. And the offence of lewdness was then abandoned to the feeble coercion of the spiritual court, according to the rules of the canon law: a law which has treated the offence of incontinence with a great deal of tenderness and lenity; owing perhaps to the constrained celibacy of its first compilers (*q*).] To this head may be also properly referred, the offences of a public and inde-

(*o*) Duchess of Kingston's case, 11 St. Tr. 262; 1 Leach, 146; Hawk. P. C. b. 1, c. 42, s. 11.

(*p*) Scob. 121. It is remarked by Blackstone (vol. iv. p. 65), that at the period alluded to in the text, "incest and wilful adultery "were made capital crimes." This offence, and that of *drunkenness*, are treated of by him as offences against God and religion.

(*q*) Proceedings, under the canon law, for incontinency, are out of use. On the other hand, modern provisions have been framed (vide sup. p. 92) to repress the offence of fraudulently procuring the defilement of young females, by prosecutions in the ordinary criminal courts.

cent exposure of the person: and the public selling or exposure for public sale, or to public view, of any obscene book, print, picture, or other indecent exhibition:—the punishment of which is fine or imprisonment, or both, with hard labour at the discretion of the court (*r*). Moreover, by 20 & 21 Vict. c. 83, upon complaint made, on oath before two justices (*s*), that obscene books, papers, writings, prints, pictures, drawings, or other representations are, to the complainant's belief, kept in some place for the purpose of being sold, distributed, exhibited, lent on hire, or otherwise published, for *gain*;—and that one or more articles of the like character have been published at or in connection with such place, so as to satisfy the justices that such belief of the complainant is well founded,—such justices may, (on being satisfied that any articles so kept are of such a character and description that the publication of them would be a misdemeanor, and proper to be prosecuted as such,) issue a special warrant authorizing an entry of the place specified in the complaint in the day-time by the police, by force if necessary; and the seizure and destruction, (if the owner does not show good cause to the contrary,) of the articles in question. An appeal, however, is given by this Act to any person aggrieved, to the next general or quarter sessions of the peace (*t*).

V. *Drunkenness* also may be referred to this head; and is punished by statute 4 Jac. I. c. 5, and 21 Jac. I. c. 7, s. 3, with the forfeiture of five shillings, to be paid, within one week after conviction, to the churchwardens, for the use of the poor: and upon a second conviction, the offender shall be bound with two sureties in 10*l.* for his good behaviour. And if the drunkenness be accompanied with any riotous or indecent behaviour, committed in a street of any town within the police provisions of

(*r*) 14 & 15 Vict. c. 100, s. 29.

(*s*) The same powers are given by the Act (sect. 1) to any single metropolitan or stipendiary magistrate.

(*t*) 20 & 21 Vict. c. 82, s. 4.

10 & 11 Vict. c. 89, the offence, by the 29th section of that Act, is punishable by a penalty not exceeding forty shillings, or seven days' imprisonment (*x*). Moreover, by "The Licensing Act, 1872" (35 & 36 Vict. c. 94), sect. 12, every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, is made liable to a penalty not exceeding ten shillings; and on a second conviction within twelve months, twenty shillings; and on a third or subsequent conviction within such period, forty shillings; while, if the drunkenness be accompanied with riotous or disorderly behaviour, or while the offender is in charge of a carriage, horse, cattle or steam engine, or while in the possession of loaded firearms, the same penalty as last mentioned may be imposed, or he may be sentenced to imprisonment for any term not exceeding one month, with or without hard labour.

VI. Another offence, which seems properly to rank under this head, is that of *wanton and furious driving;* as to which, it is declared by 24 & 25 Vict. c. 100, that if any person, having the charge of any carriage or vehicle, shall by wanton or furious driving, or racing, or other wilful misconduct or neglect do, or cause to be done, any bodily harm to any person whatsoever, he shall be guilty of a misdemeanor, and may be imprisoned with or without hard labour to the extent of two years (*y*). It may be remarked that the enactment, that such conduct shall amount to a misdemeanor, must be taken as declaratory only of the common law; according to which it is misdemeanor,—and may even amount to manslaughter or murder,—for any person to drive or ride so wantonly and furiously, as to endanger the passengers on the highway (*z*).

(*x*) See Martin *v.* Pridgeon, 1 E. & E. 778.

(*y*) 24 & 25 Vict. c. 100, s. 35. The offender may also be bound over to keep the peace or be of good behaviour (sect. 71).

(*z*) Fost. 263; see R. *v.* Mastin, 6 C. & P. 396; R. *v.* Taylor, 9 C. & P. 672.

VII. A seventh offence is that of *cruelty to animals;* it being enacted by 12 & 13 Vict. c. 92 (amended by 17 & 18 Vict. c. 60), that if any person shall cruelly beat, ill-treat, over-drive, abuse, or torture any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog (*a*), cat, or any other domestic animal, he shall forfeit a sum not exceeding 5*l.* for every such offence, recoverable before a justice of the peace in a summary way; and if by any such misconduct he shall injure the animal, or any person or property, a further sum not exceeding 10*l.* to the owner or person injured (*b*). The Acts also inflict penalties in the case of conveying any such animal from one place to another in such a manner or position, as to subject it to unnecessary pain or suffering; and also in the case of bull-baiting, cock-fighting, and the like (*c*). And they make a variety of humane provisions for the regulation of the business of slaughtering horses, and other cattle not intended for butcher's meat (*d*). They contain also provisions for ensuring a proper supply of food and water, to all animals that shall be *impounded.*

VIII. Another misdemeanor against the public economy is that of *concealing a birth.* For by 24 & 25 Vict. c. 100 (*e*), it is enacted, that if a woman be delivered of a

(*a*) By 2 & 3 Vict. c. 47, (extended by 17 & 18 Vict. c. 60, s. 2,) it is prohibited, under a penalty, to use any dog for the purposes of *draught.*

(*b*) Previous Acts on the same subject, 3 Geo. 4, c. 71, and 3 Will. 4, c. 19, were repealed by 5 & 6 Will. 4, c. 59; and the Act last mentioned, by 12 & 13 Vict. c. 92.

(*c*) See Clarke, app. *v.* Hague, resp., 29 L. J. (M. C.) 105; Mosley, app., Greenhalgh, resp., 3 B. & Smith, 374; Clark, app. *v.* Hague, resp., 2 Ell. & Bl. 281; Colam, app., Hall, resp., Law Rep., 6 Q. B. 206.

(*d*) See also the previous Act of 7 & 8 Vict. c. 87; and as to slaughterhouses, &c., 26 Geo. 3, c. 71.

(*e*) This statute describes itself as one relating to offences against *the person;* but the misdemeanor in question appears more properly to be classed as an offence against the public police or economy. The provision on the subject contained in 9 Geo. 4, c. 31, s. 14, is repealed by 24 & 25 Vict. c. 95.

child, every person who shall, by any secret disposition of the dead body of such child, (whether such child died before or after its birth,) endeavour to conceal the birth, shall be guilty of a misdemeanor; and be liable to be imprisoned, with or without hard labour, for any term not more than two years (*g*). It is also provided, that if any person tried for the murder of a child shall be acquitted thereof, it shall be lawful for the same jury, to find such person guilty (if the case be so) of endeavouring to conceal the birth: upon which the court may pass the same sentence, as if such person had been convicted upon an indictment for the concealment (*h*).

IX. *Taking up dead bodies* from the place where they have been interred, for the purpose of dissection or otherwise, is also a misdemeanor at common law, and punishable with fine and imprisonment (*i*). And under this

(*g*) 24 & 25 Vict. c. 100, s. 60. The offender, if the court think fit, may also, in addition to or in lieu of any other punishment, be bound over to keep the peace and be of good behaviour (sect. 71).

(*h*) Sect. 60. The law on this subject was formerly different. For by 21 Jac. 1, c. 27, it was enacted, that if any woman was delivered of a child, which, if born alive, would have been by law a bastard, and endeavoured privately to conceal its birth, by burying the child or the like, the mother so offending should suffer death, as in the case of murder, unless she could prove, by one witness at least, that the child was actually born dead. A law as to which Blackstone remarks (vol. iv. p. 198), that, "though it savours pretty strongly "of severity, in making the concealment of the death almost conclusive evidence of the child's being "murdered by the mother, it is "nevertheless also to be met with in "the criminal codes of many other "nations of Europe,—as the Danes, "the Swedes, and the French;" and he goes on to remark, that "it had "of late years been usual with us "in England, upon trials for this "offence, to require some sort of "presumptive evidence that the "child was born alive; before the "other constrained presumption,— "that the child whose death is concealed was therefore killed by its "parent—was admitted to convict "the prisoner." This statute was afterwards repealed by 43 Geo. 3, c. 58, which provided that the trials of women charged with the murder of any of their issue, which would by law be bastard, should proceed by the like rules of evidence and presumption as were allowed in other trials for murder.

(*i*) See Arch. Cr. Pr. 675; R. *v.* Lynn, 2 T. R. 733; 2 East's P. C.

head may also be noticed the offence, of *refusing to bury dead bodies* by those whose duty it is so to do; which appears to be punishable by the temporal courts, (independently of spiritual censures,) on indictment or information (*k*).

X. *Refusing to serve a public office* (such as that of constable or overseer), without lawful excuse or exemption, is also a misdemeanor at common law, punishable with fine and imprisonment (*l*).

XI. Another offence, ranging itself under our present head, is that of the illegal destruction of such beasts and fowl as are ranked under the denomination of *game;* concerning which, (considered as a species of *property,*) we had occasion in a former volume to enter into some discussion.

It will be necessary here, however, to add to what is there contained, some notice of the penal enactments relative to its destruction in the night-time; when (from obvious considerations) it is treated as an offence of considerable gravity. Accordingly by 9 Geo. IV. c. 69, and 7 & 8 Vict. c. 29 (*m*), it is provided, that if any person shall, *by night* (*n*), unlawfully take or destroy any game

c. 16, s. 89; R. *v.* Duffin, R. & R. C. C. R. 365; The Queen *v.* Sharpe, 26 L. J. (M. C.) 47; 2 & 3 Will. 4, c. 75.

(*k*) Andrews *v.* Cawthorne, Willes, 527, n. a; and see Mastin *v.* Escott, decided May 8, 1841, by Sir H. Jenner Fust; and Kemp *v.* Wickes, 2 Phil. Rep. 264. As to the interment of dead bodies cast on shore from the sea, see 48 Geo. 3, c. 75.

(*l*) Arch. Cr. P. 769. See R. *v.* Poynder, 1 B. & C. 178; R. *v.* Bower, ibid. 587.

(*m*) There is also a provision in 24 & 25 Vict. c. 96, s. 17, with respect to the unlawful taking or killing hares or rabbits in warrens, *by night.*

(*n*) By 9 Geo. 4, c. 69, s. 12, the *night,* for the purpose of this provision, shall be considered to commence at the expiration of one hour after sunset, and to conclude at the beginning of the last hour before sunrise.

or rabbits, in any land (whether open or enclosed); or on any public road, highway or path, or the sides thereof; or at the openings, outlets or gates from any such lands into such roads;—or shall, *by night*, be in such places, with any gun, net, engine or other instrument, for the purpose of taking or destroying game:—he shall be liable to imprisonment, for the first offence, for any period not exceeding three months, with hard labour; and, at the expiration of such period, to be bound over to his good behaviour by sureties for a year; or, in default of such recognizance, to be further imprisoned for six months, or until such sureties are found (*o*). For a second offence, such person shall be liable to imprisonment for six months, and then to be bound in sureties for two years; and in default thereof, to be further imprisoned for one year, or until such sureties are found (*p*). And if he shall offend a third time, he is guilty of a misdemeanor; and he is then liable to penal servitude for not more than seven nor less than three years, or to be imprisoned, with hard labour, for any time not exceeding two years (*q*). It is moreover provided, that when any person shall be found committing such offence, it shall be lawful for the owner or occupier of the land; or for any person having a right of free warren or free chase therein; or for the lord of the manor; or for the gamekeeper or servant of such persons or their assistants;—to seize and apprehend any person so offending; and in case he shall assault or offer violence with an offensive weapon, towards any person so authorized to apprehend him, he is guilty of a misdemeanor; and he is, in that case, liable to penal servitude for not more than seven nor less than five years, or to be imprisoned, with hard labour, for any term not exceeding two years (*r*).

(*o*) 9 Geo. 4, c. 69, s. 1.
(*p*) Ibid.
(*q*) Ibid.; 7 & 8 Vict. c. 29; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3.
(*r*) 9 Geo. 4, c. 69, s. 1; 7 & 8 Vict. c. 29; 16 & 17 Vict. c. 99; 20

It is further enacted that if *three or more* persons shall, *by night*, unlawfully enter any lands or roads, for the purpose of taking or destroying game or rabbits (any of them being armed with any gun or other offensive weapon), each of such persons shall be guilty of a misdemeanor: and they shall severally be liable to penal servitude for any term not more than fourteen years, nor less than five years; or to be imprisoned, with hard labour, for not more than two years (*s*).

XII. Lastly, under the general head of *vagrancy and other disorderly conduct*, may be classed a variety of offences against the public economy. The civil law expelled all sturdy vagrants from the city (*t*). And, in our own law, idle persons and vagabonds,—whom our antient statutes describe to be "such as wake on the night "and sleep on the day, and haunt customable taverns "and alehouses, and routs about; and no man wot from "whence they come, ne whither they go;" are more particularly described by statute 5 Geo. IV. c. 83, and are there divided into three classes, *idle* and *disorderly* persons, *rogues* and *vagabonds*, and *incorrigible rogues* (*u*). These

& 21 Vict. c. 3; 26 & 27 Vict. c. 47. (See Cureton *v.* The Queen, 1 B. & Smith, 208.)

(*s*) 9 Geo. 4, c. 69, s. 9; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3; 27 & 28 Vict. c. 47. See the following cases as to the construction of 9 Geo. 4, c. 99, s. 9: R. *v.* Dowsell, 6 Car. & P. 398; R. *v.* Gainer, 7 Car. & P. 231; R. *v.* Kendrick, ibid. 184; R. *v.* Davis, 8 Car. & P. 759; R. *v.* Fry, 2 M. & Rob. 42; Fletcher *v.* Calthrop, 6 Q. B. 880; R. *v.* Jones, 2 Cox's Cr. C. 185; R. *v.* Merry, ibid. 240; R. *v.* Whitaker and others, 17 L. J. (M. C.) 127; R. *v.* Uezzell and others, 20 L. J. (M. C.) 192.

(*t*) 4 Bl. Com., p. 169, citing Nov. 80, c. 5.

(*u*) The statute particularly defines the persons who are to come within one or other of these three general appellations, but the enumeration is too long for insertion. By other Acts, also, persons committing particular offences of various kinds are to be deemed *idle and disorderly persons*, &c., within the statute of Geo. 4, and may be punished accordingly. See 1 & 2 Vict. c. 38; 29 & 30 Vict. c. 113, s. 15; 34 & 35 Vict. c. 112, s. 15; 36 & 37 Vict. c. 38.

are all offenders against the good order, and blemishes in the government, of any kingdom, and they may be proceeded against under the 4th section of the above statute; and, if convicted, may be punished as follows (*y*); that is to say,—"idle and disorderly persons," with one month's imprisonment, and hard labour: "rogues and vagabonds" with three months' imprisonment, and hard labour: while "incorrigible rogues," may be committed to the next

(*y*) We may remark here, that two classes of offenders seem to be now punishable under the Act of Geo. 4, who were formerly treated by our law with much more severity. 1. *Idle soldiers and marines*, or persons pretending to be *soldiers or marines, wandering about the realm.* Such persons were deemed under the statute 39 Eliz. c. 17, (repealed by 52 Geo. 3, c. 31,) to be *ipso facto* guilty of a capital felony. 2. *Outlandish persons calling themselves Ægyptians or Gypsies.* Against these, provisions were made by 1 & 2 Ph. & M. c. 4, and 5 Eliz. c. 20; by which if the gypsies themselves, or if any person, being fourteen years old, who had been seen or found in their fellowship, or had disguised himself like them, remained in this kingdom one month, it was felony; and we are informed by Sir M. Hale (1 Hale, P. C. 671), that at one Suffolk assizes no less than thirteen gypsies were executed upon these statutes. But they are now repealed by 23 Geo. 3, c. 51, and 1 Geo. 4, c. 116. (See also 19 & 20 Vict. c. 64.) Blackstone remarks (vol. iv. p. 165), as to gypsies, that "they "are a strange kind of common-"wealth among themselves of wan-"dering impostors and jugglers, who "were first taken notice of in Ger-"many about the beginning of the "fifteenth century, and have since "spread themselves all over Europe. "Munster, who is followed and re-"lied upon by Spelman and other "writers, fixes the time of their first "appearance to the year 1417; under "passports, real or pretended, from "the Emperor Sigismund, king of "Hungary. And Pope Pius the se-"cond, (who died A.D. 1464,) men-"tions them in his history as thieves "and vagabonds, then wandering "with their families over Europe "under the name of Zigari; and "whom he supposes to have mi-"grated from the country of the "Zigi, which nearly answers to the "modern Circassia. In the com-"pass of a few years they gained "such a number of idle proselytes "(who imitated their language and "complexion, and betook them-"selves to the same arts of chiro-"mancy, begging and pilfering), "that they became troublesome, and "even formidable, to most of the "states of Europe. Hence they "were expelled from France in the "year 1560, and from Spain in 1591. "And the government in England "took the alarm much earlier; for

sessions of the peace, and kept to hard labour in the interim: and may be further punished, if convicted at the sessions, with imprisonment and hard labour for one year, and with whipping, except in the case of females (*a*).

" in 1530 they are described by " statute 22 Hen. 8, c. 10, as out- " landish people calling themselves " Egyptians, using no craft nor feat " of merchandize, who have come " into this realm, and gone from " shire to shire, and place to place, " in great company, and used great " subtle and crafty means to deceive " the people; bearing them in hand, " that they by palmestry could tell " men and women's fortunes; and " so, many times, by craft and sub- " tilty have deceived the people of " their money; and also have com- " mitted many heinous felonies and " robberies." Much more recent information, however, as to the origin and history of the Gypsies, will be found in the work of Mr. Borrow, called "Zincali," published in 1841.

(*a*) By 5 Geo. 4, c. 83, s. 13, houses of reception for travellers, may be searched for vagrants, &c., and the suspected parties may be carried before a magistrate. See also 34 & 35 Vict. c. 112, ss. 11, 16.

CHAPTER XIII.

OF THE MEANS OF PREVENTING OFFENCES.

[WE are now arrived at the fifth general branch or head, under which we were to consider the subject of this Book of our Commentaries (*a*): viz., the means of *preventing* the commission of crimes and misdemeanors: and really it is an honour, and almost a singular one, to our English laws, that they furnish a title of this sort; since *preventive* justice is, upon every principle of reason, of humanity and of sound policy, preferable, in all respects, to *punishing* justice (*b*); the execution of which, though necessary, and in its consequences a species of mercy to the commonwealth, is always attended with many harsh and disagreeable circumstances.

This preventive justice chiefly consists in obliging those persons, whom there is a probable ground to suspect of future misbehaviour, to stipulate with and to give full assurance to the public, that such offence as is apprehended shall not happen: and that, by their finding pledges, or securities, for keeping the peace; or for their good behaviour (*c*).

By the Saxon constitutions these sureties were always at hand, by means of King Alfred's wise institution of decennaries or frank pledges; wherein, as has more than

(*a*) Vide sup. p. 2.

(*b*) Beccar. ch. 41.

(*c*) The 34 & 35 Vict. c. 112, is entitled "An Act for the more effectual Prevention of Crime," but its provisions scarcely come within the scope of the present chapter. They have reference chiefly to convicts holding *licences* under the Penal Servitude Acts; the better *identification* of criminals; and the punishments of persons *twice convicted* of crime.

[once been observed, the whole neighbourhood, or tything, of freemen were mutually pledges for each other's good behaviour (*d*). But this great and general security being now fallen into disuse and neglected, there hath succeeded to it the method of making suspected persons find particular and special securities for their future conduct; of which we find mention in the laws of King Edward the Confessor; "*tradet fidejussores de pace et legalitate tuendâ*" (*e*).

This security is either for *keeping the peace*, or for *good behaviour;* and consists in being bound with one or more securities in a recognizance or obligation to the Crown, and taken in some court, or by some judicial officer (*f*); whereby the party bound acknowledges himself to be indebted to the Crown in the sum required, (for instance 100*l.*,) with condition to be void and of none effect if he shall appear in court on such a day, and in the mean time shall keep the peace either generally, towards the sovereign and all his liege people; or particularly also, with regard to the person who craves the security. Or, the condition

(*d*) Vide sup. vol. I. p. 126.

(*e*) Cap. 18. It is said in Willis *v.* Bridges, 2 B. & Ald. 287, that the authority of a justice of the peace, to take security for the peace, appears to have had its origin in stat. 1 Edw. 3, st. 2, c. 16, and that this authority is more fully set forth in 34 Edw. 3, st. 1.

(*f*) It may be remarked that in all cases where a justice of the peace is authorized to bind a person, or make him give security, he may do so by *recognizance*. (2 Arch. Just. 350.) And such cases may arise under other circumstances than those mentioned in the text. Thus, the justice or justices before whom any person has been charged with any indictable offence, and before whom witnesses in support of such charge have been examined, may bind, by recognizance, the prosecutor and every such witness to prosecute and give evidence. (See 11 & 12 Vict. c. 42, ss. 20, 21, 22, 23, 24.) And in the case of any charge or complaint of any offence punishable by way of summary conviction, the justices may also so bind over the defendant to appear at the hearing. (See 11 & 12 Vict. c. 43, ss. 3, 9, 13, 16, 20.) See also 19 & 20 Vict. c. 16, ss. 8—10, 22, 23, and 25 & 26 Vict. c. 65, ss. 9, 17, as to recognizances where an indictment or inquisition has been removed for trial to the Central Criminal Court. Et vide post, p. 297, as to recognizances *after* a conviction for felony or misdemeanor.

[of the recognizance may be to keep the peace for a certain period, not dependant on any appearance in court (*g*). Or if it be for the good behaviour,—then on condition that the party bound shall demean and behave himself well, or be of good behaviour, either generally or specially, for the time therein limited; as for one or more years, or for life (*h*): and if the condition of such recognizance be broken, by any breach of the peace in the one case; or by any misbehaviour, in the other; the recognizance becomes forfeited or absolute; and the party and his sureties become the Crown's absolute debtors, for the several sums in which they are respectively bound (*i*).

Any justices of the peace, by virtue of their commission (and also those *ex officio* conservators of the peace, mentioned in a former volume,) may demand such security according to their own discretion (*k*): or it may be granted at the request of any subject, upon due cause shown,—provided such demandant be under the Crown's protection: for which reason it has been formerly doubted whether Jews, pagans, or persons convicted of a *præmunire*, were entitled thereto (*l*). Or if the justice is averse to act, it may be obtained by a mandatory writ, called a *supplicavit*,—which will compel the justice to act as a ministerial, and not as a judicial, officer; and he must make a return of such writ, specifying his compliance, under his hand and seal (*m*). But this writ is seldom

(*g*) Where taken for appearance in court (as it usually is), the justice must, by 3 Hen. 7, c. 1, certify the recognizance to the next session, there to remain of record. See Willis *v.* Bridges, 2 B. & Ald. 287.

(*h*) Hawk. P. C. b. 1, c. 60, s. 15.

(*i*) As to the forfeiture of recognizances, the following statutes and cases may be consulted: 3 Geo. 4, c. 46; 4 Geo. 4, c. 37; 7 & 8 Geo. 4, c. 64, s. 31; 3 & 4 Will. 4, c. 99; 2 & 3 Vict. c. 71, s. 45; 20 & 21 Vict. c. 43, s. 13; R. *v.* Justices of West Riding, 7 A. & E. 583; R. *v.* Twyford, 5 B. & Ad. 430.

(*k*) As to *ex officio* conservators of the peace, vide sup. vol. II. p. 642. A secretary of state or privy councillor, however, cannot bind to keep the peace or good behaviour. (11 St. Tr. 317.)

(*l*) Hawk. P. C. b. 1, c. 60, s. 3.

(*m*) F. N. B. 80; Clavering's case, 2 P. Wms. 202.

[used; for when application is made to the superior courts, they usually take the recognizances there, under the directions of the statute 21 Jac. I. c. 8.] And in this case, as well as where application is made to the court of quarter sessions, it is founded upon *articles* first exhibited in court, and supported by the oath of the exhibitant (*n*); the truth of which articles cannot be controverted (*o*). But where the parties live in the country at a distance from London, the Queen's Bench will not in general entertain an application of this description; which it is usual, in such case, to make to a justice of the peace in the neighbourhood, or to the court of quarter sessions (*p*). [A peer or peeress, however, cannot be bound over either by a justice or at quarter sessions; though a justice of the peace has power to require sureties of any person under the degree of nobility,—whether he be a fellow justice or other magistrate, or whether he be merely a private man (*q*). Wives may demand it against their husbands, or husbands (if necessary) against their wives (*r*). But infants ought to find security by their friends only, and not to be bound themselves; for they are incapable of engaging themselves to answer any debt; which, as we have observed, is the nature of these recognizances or acknowledgments.

Thus far, what has been said is applicable to both species of recognizances: for the *peace*, and for the *good behaviour*. But as these two species of securities are in some respects different,—especially as to the cause of granting or the means of forfeiting them,—it may be useful next to consider them separately.

1. Any justice of the peace may *ex officio* bind by recognizances, with sureties to keep the peace, all who in his presence make any affray, or threaten to kill or beat

(*n*) See Ex parte Williams, M'Clel. 493; 12 Price, 673; Regina *v.* Mallinson, 1 L. M. & P. 619.

(*o*) R. *v.* Doharty, 13 East, 171.

(*p*) R. *v.* Waite, 2 Burr. 780; Chitty's Burn, Surety of the Peace.

(*q*) Hawk. P. C. b. 1, c. 60, s. 5.

(*r*) Sim's case, 2 Stra. 1207.

[one another; or who contend together with hot and angry words; or go about with unusual weapons or attendance, to the terror of the people.. He may also bind all such as he knows to be common barrators; and such as are brought before him by the constable for a breach of the peace in his presence: and all such persons as having been before bound to the peace, have broken it, and forfeited their recognizances (*s*). Also wherever any private man has just cause to fear that another will burn his house; or do him a corporal injury, by killing, imprisoning, or beating him: or that he will procure others so to do;—he may demand surety of the peace against such person: and every justice of the peace is bound to grant such surety, if he who demands it will make oath, that he is actually under fear of death or bodily harm; and will show that he has just cause to be so by reason of the other's menaces, attempts, or having lain in wait for him (*t*); and will also further swear that he does not require such surety out of malice, or for mere vexation (*u*). This is called *swearing the peace* against another; and if the party does not find such sureties, he may immediately be committed till he does (*x*).] It is however provided by 16 & 17 Vict. c. 30, s. 3, that no person committed to prison for such cause, under any warrant or order of one justice of the peace, shall be detained there for a longer period than twelve calendar months.

[Such recognizance for keeping the peace, when given, may be forfeited by any actual violence,—or even an assault, or menace, to the terror of him who demanded it,—provided it be a special recognizance. And, if the recognizance be general, then by any unlawful action whatever, that either is or tends to be a breach of the peace; or, more particularly, by any one of the many

(*s*) Hawk. P. C. b. 1, c. 60, s. 1.

(*t*) See Ex parte Hulse, 21 L. J. (M. C.) 21.

(*u*) Hawk. P. C. ubi sup. s. 8.

(*x*) Ibid. s. 9. See Prickett *v.* Gratrex, 8 Q. B. 1020.

[species of offences which were mentioned as crimes against the peace, in the tenth chapter of this Book; or by any private violence, committed against any of the subjects of the Crown. But a bare trespass upon the lands or goods of another,—which is a ground for a civil action,—unless accompanied with a wilful breach of the peace, is no forfeiture of the recognizance (*y*). Neither are mere reproachful words, as calling a man knave or liar, any breach of the peace, so as to forfeit one's recognizance (being looked upon to be merely the effect of unmeaning passion and heat), unless they amount to a challenge to fight (*z*).

2. The other species—viz. a recognizance, with sureties, for the *good abearance* or *good behaviour*, includes security for the peace and somewhat more; we will therefore examine it, in the same manner as the other.

First, then, the justices are empowered by the statute, 34 Edward III. c. 1, to bind over to the good behaviour towards the sovereign and his people, all them *that be not of good fame*, wherever they are found: to the intent that the people be not troubled or endamaged; nor the peace diminished: nor merchants and others passing by the highways of the realm, be disturbed nor put in the peril which may happen by such offenders. Under the general words of this expression, *that be not of good fame*, it is holden, that a man may be bound to his good behaviour for causes of scandal, *contra bonos mores*, as well as *contra pacem*; as for haunting bawdy houses with women of bad fame, or for keeping such women in his own home: or for words tending to scandalize the Government; or in abuse of the officers of justice, especially in the execution of their office. Thus also a justice may bind over all night walkers; eaves-droppers; such as keep suspicious company, or are reported to be pilferers or robbers; such

(*y*) Hawk. P. C. b. 1, c. 60, s. 25. (*z*) Ibid. s. 22.

[as sleep in the day and wake in the night; common drunkards; whore masters; cheats; idle vagabonds; and other persons whose misbehaviour may reasonably bring them within the general words of the statute,—as persons not of good fame; an expression, it must be owned, of so great a latitude, as leaves much to be determined by the discretion of the magistrate himself. But if he commits a man for want of sureties, he must express the cause thereof with convenient certainty; and take care that such cause be a good one (*a*).] And there is a similar limitation as to the period of detention in prison under the warrant or order of a single justice, as we mentioned in reference to binding over to keep the peace (*b*).

[A recognizance for the good behaviour may be forfeited by all the same means, as one for the security of the peace may be: and also by some others;—as by speaking words tending to sedition; or by committing any of those acts of misbehaviour which the recognizance was intended to prevent. But not by barely giving fresh cause of suspicion, of that which perhaps may never actually happen (*c*); for though it is just to compel suspected persons to give security to the public against misbehaviour that is apprehended; yet it would be hard upon such suspicion, without the proof of any actual crime, to punish them by a forfeiture of their recognizance.]

Such are the doctrines laid down in the books with respect to recognizances for *good behaviour*. In what manner, however, and to what extent the provisions of the 34 Edward III. ought at the present day to be enforced, may be doubtful: and justices, even at sessions, are recommended, by a learned writer on the subject, to refrain from acting under this statute, where no complaint, requiring such recognizance to be taken has been made: except only in cases where a conviction for some offence

(*a*) Hawk. P. C. b. 1, c. 62, s. 4. sup. p. 294.
(*b*) 16 & 17 Vict. c. 30, s. 4; vide (*c*) 16 & 17 Vict. c. 30, s. 5.

of a dangerous kind has taken place; and the circumstances are such as to render probable, a repetition of it by the same offender (*d*).

In reference to cases of *conviction*, additional facilities for the prevention of crime, by the use of recognizances for the peace and good behaviour, have been now afforded by the legislature. For a provision was inserted in each of the Criminal Law Consolidation Acts of the year 1861, to the following effect (*e*); viz., that whenever any person shall be convicted of *an indictable misdemeanor*, punishable under any of those statutes respectively, the court may, if it shall think fit, in addition to or in lieu of any of the punishments authorized by the Act, fine the offender and require him to enter into his own recognizances and to find sureties (both or either), for keeping the peace and being of good behaviour; and in case of a *felony*, punishable under any of such Acts respectively, may require the offender to enter into such recognizances and to find sureties (both or either), in addition to any punishment authorized by the Act under which he has been convicted. There is however a proviso that no person is to be imprisoned under this clause, for not finding sureties, for any period exceeding one year.

(*d*) 2 Arch. Just. 454.

(*e*) See 24 & 25 Vict. c. 96, s. 117; c. 97, s. 73; c. 98, s. 51; c. 99, s. 38; c. 100, s. 71.

CHAPTER XIV.

OF COURTS OF A CRIMINAL JURISDICTION.

[THE last object of our inquiries will be the method of *inflicting* those punishments, which the law has annexed to particular offences; and which, in this treatise, have been constantly subjoined to the description of the crime itself (*a*). In the discussion of these, we shall, in the first place, point out the several courts of criminal jurisdiction wherein offenders may be prosecuted to punishment: and then explain the several proceedings which may be had therein. And in reckoning up the several courts of criminal jurisdiction, we shall begin with an account of such as are of a public and general jurisdiction throughout the whole realm: and afterwards proceed to such as are only of a private and special jurisdiction, and confined to some particular parts of the kingdom.

First. As to the criminal courts of *public and general jurisdiction*;—with regard to which we shall, in one respect, pursue a different order, from that in which we considered the civil tribunals. For there, as the several courts had a gradual subordination to each other,—the superior correcting and reforming the errors of the inferior,—it seemed proper to begin with the lowest, and to ascend gradually to the courts of appeal, or those of the most extensive powers (*b*). But as it is contrary to the genius and spirit of the law of England to suffer any man twice to be tried for the same offence in a criminal

(*a*) Vide sup. p. 2. (*b*) Vide sup. bk. v. c. IV.

[way, especially if acquitted upon the first trial,—therefore these criminal courts may be said to be all independent of each other; at least so far as that the sentence of the lowest of them can never be controlled or reversed by the highest jurisdiction in the kingdom, unless for error in matter *of law* (*c*); though sometimes causes may be removed from one to the other, before trial. And, therefore, as in these courts of criminal cognizance, there is not the same chain and dependence as in the others, it is proposed to rank them according to their dignity, and begin with the highest of all, viz.—

1. The High Court of *Parliament;* which is the supreme court in the kingdom, not only for the making but also for the execution of laws, by the trial of great and enormous offenders, whether lords or commoners, in the method of parliamentary impeachment. As for Acts of parliament to attaint particular persons of treason or felony,—or to inflict pains and penalties, beyond or contrary to the common law, to serve a special purpose,—we speak not of them; such being to all intents and purposes new laws, made *pro re natâ*, and by no means an execution of such as are already in being. But an impeachment before the lords, by the commons of Great Britain in parliament, is a prosecution of the already known and established law, and has been frequently put into practice,—being a presentment to the most high and supreme court of criminal jurisdiction, by the most solemn grand inquest of the whole kingdom (*d*). A commoner cannot, however, be impeached before the lords for any capital offence, but only for high misdemeanors; a peer may be so impeached, for any crime (*e*). And it has been

(*c*) As to reserving questions of law, arising at assizes or sessions, for the consideration of the judges, see 11 & 12 Vict. c. 78. And as to cases stated by justices of the peace, on the application of any person aggrieved by their determination in point of law, in the exercise of their summary jurisdiction, see 20 & 21 Vict. c. 43, and 35 & 36 Vict. c. 26.

(*d*) 1 Hale, P. C. 150.

(*e*) When, in the fourth year of

[customary, (in cases of an impeachment of a peer for treason,) to address the Crown to appoint a Lord High Steward, for the greater dignity and regularity of the proceedings; which High Steward was formerly elected by the peers themselves, though he was generally commissioned by the sovereign; but it hath in modern times been strenuously maintained, that the appointment of a High Steward in such cases is not indispensably necessary, but that the House may proceed without one (*f*). The articles of impeachment are a kind of bill of indictment, found by the house of commons, and afterwards tried by the house of lords; who are, in cases of misdemeanor, considered not only as their own peers, but as the peers of the whole nation. This is a custom derived to us from the constitution of the antient Germans; who, in their great councils, sometimes tried capital accusations

Edward the third, the king demanded the earls, barons and peers to give judgment against Simon de Bereford, who had been a notorious accomplice in the treasons of Roger Earl of Mortimer, they came before the king in parliament and said all with one voice, that the said Simon was not their *peer;* and therefore they were not bound to judge him as a peer of the land. And when afterwards, in the same parliament, they were prevailed upon, in respect of the notoriety and heinousness of his crimes, to receive the charge and give judgment against him, a solemn protest and proviso in respect of the offender not being a peer was entered in the parliament roll. (Rot. Parl. 4 Edw. 3, n. 2 and 6; 2 Brad. Hist. 190; Selden, Judic. in Parl. c. 1.) But Mr. Christian says in his edition of Blackstone (vol. iv. p. 260), that, according to the last resolution of the house of lords, a commoner *may* be impeached for a capital offence. And he mentions, on the authority of the Journals of the House of Lords, the case of Sir Adam Blair and four other commoners, who, on the 26th June, 1689, were impeached for high treason, in having published a proclamation of James the second. (14 Lords' Journ. p. 260.) Mr. Christian adds that this impeachment was not prosecuted with effect, on account of an intervening dissolution of the parliament. See also Lives of the Chancellors, by Lord Campbell, vol. iii. p. 357, n.; the observations of Mr. May on this subject, in his Practice in Parliament; and the case of The Queen *v.* Boyes, 1 Best & Smith, p. 324.

(*f*) As to the appointment of the High Steward, see 1 Hale, P. C. 350; Lords' Journ. 12th May, 1679; Com. Journ. 15th May, 1679; Fost. 142, &c.

[relating to the public: "*licet apud consilium accusare quoque, et discrimen capitis intendere*" (*g*). And it has a peculiar propriety in the English constitution, which has much improved upon the antient model, imported hither from the continent. For, though, in general, the union of the legislative and judicial powers ought to be most carefully avoided: yet it may happen that a subject, intrusted with the administration of public affairs, may infringe the rights of the people; and be guilty of such crimes as the ordinary magistrate, either dares not or cannot punish. Of these the representatives of the people, or house of commons, cannot properly *judge;* because their constituents are the parties injured: and therefore can only *impeach.* But before what court shall this impeachment be tried? Not before the ordinary tribunals, which would naturally be swayed by the authority of so powerful an accuser. Reason, therefore, will suggest, that this branch of the legislature, which represents the people, must bring its charge before the other branch,—which consists of the nobility,—who have neither the same interests nor the same passions as popular assemblies (*h*). This is a vast superiority, which the constitution of this island enjoys, over those of the Grecian or Roman republics; where the people were, at the same time, both accusers and judges. It is proper that the nobility should judge, to ensure justice to the accused; as it is proper that the people should accuse, to ensure justice to the commonwealth. And, therefore, among other extraordinary circumstances attending the authority of this court, there is one of a very singular nature; which was insisted upon by the house of commons in the case of the Earl of Danby, in the reign of Charles the second (*i*); and which is now established by the Act of Settlement (*k*).] This is, that no pardon under the

(*g*) Tacit. de Mor. Germ. 12.
(*h*) Montesq. Sp. L. xi. 6.
(*i*) Com. Journ. 5th May, 1679.
(*k*) 12 & 13 Will. 3, c. 2; 4 Bl. Com. p. 261.

Great Seal shall be pleadable to an impeachment by the commons of Great Britain in parliament, so as to prevent its further prosecution (*m*); though such a pardon would be pleadable in bar, (as we shall see hereafter,) in the case of an ordinary indictment.

Before the House of Peers, also, is tried any peer or peeress against whom an *indictment* for treason or felony, or for misprision of either, is found, during a session of parliament, by a grand jury of freeholders in the Queen's Bench (or at the assizes before a judge of *oyer and terminer*,)—such indictment being removed hither by writ of *certiorari* (*n*).

2. [The Court of the *Lord High Steward* of Great Britain, is a court instituted for the trial, during the *recess* of parliament, of peers or peeresses indicted for treason or felony (*o*); or for misprision of either (*p*). The office of this great magistrate is very antient; and was formerly hereditary, or at least held for life, or *dum bene se gesserit:* but now it is usually, and hath been for many centuries past (*q*), granted *pro hâc vice* only; and it hath been the constant practice, (and therefore seems now to have become necessary,) to grant it to a lord of parliament, else he is incapable to try such delinquent peer (*r*).] When, therefore, an indictment has been

(*m*) See The Queen *v.* Boyes, 1 B. & Smith, per cur. 382.

(*n*) 4 Bl. Com. p. 262; Bac. Ab. Courts (G); Com. Dig. Parliament (L. 13). The last occasion of such a trial was in the year 1841, when the Earl of Cardigan was tried before the House of Lords for felony, in shooting at Captain Tuckett. An account of the proceedings will be found in the 83rd volume of the Annual Register.

(*o*) 4 Inst. 58; Hawk. P. C. b. 2, c. 2, s. 44; 2 Jon. 54.

(*p*) R. *v.* Lord Vaux, 1 Bulst. 198.

(*q*) Pryn. on 4 Inst. 46.

(*r*) "*Quand un seignour de parlement serra arrein de treason ou felony, le roy par ses lettres patents fera un grand et sage seignour d'estre le grand seneschal d'Angleterre: qui doit faire un precept, pur faire venir xx seigneurs, ou xviii,*" &c. (Yearb. 13 Hen. 8, 11.) (See Saundf. P. C. 152; 3 Inst. 28; 4 Inst. 59; Hawk. P. C. b. 2, c. 2; Barr. 234.

found (during such recess) in the Queen's Bench or at the assizes against one having the privilege of peerage, it is to be removed by a writ of *certiorari* into the Court of the Lord High Steward: which, only, has power to determine it (*s*). But this is only in case the offence be of the description before mentioned, viz. treason, felony, or misprision of treason or felony; for if it be of any other kind, the privilege does not exist, and the peer must be tried by jury in the court in which the indictment is found (*t*). [A peer may plead a pardon before the Queen's Bench: and the judges thereof have power to allow it; in order to prevent the trouble of appointing a High Steward, merely for the purpose of receiving such plea. But he may not plead, therein, any other plea; as *guilty* or *not guilty*, of the indictment; but only in the court of the Lord High Steward. Because in consequence of such plea, it is possible that judgment of death might be awarded against him. The sovereign, therefore, in case a peer be indicted for treason, felony, or misprision, creates a Lord High Steward, *pro hâc vice*, by commission under the Great Seal; which recites the indictment so found, and gives his Grace power to receive and try it, *secundum legem et consuetudinem Angliæ*. Then, when the indictment is regularly removed by writ of *certiorari*, commanding the inferior court to certify it up to him,—the Lord High Steward directs a precept to a serjeant-at-arms, to summon the lords to attend and try

(*s*) Lord Coke says, (3 Inst. 30,) "that this privilege cannot be "waived by the peer indicted;" but Hawkins (P. C. b. 2, c. 44, s. 19) holds that it is waived if he puts himself upon his country; that is, pleads not guilty, and refers the issue to a trial by jury. By 19 & 20 Vict. c. 16, the Court of Queen's Bench is empowered to order certain indictments to be tried in the Central Criminal Court; but, by the twenty-ninth section of the Act, it is not to apply to any indictment or inquisition charging any peer or peeress (or other person claiming the privilege of peerage) with any offence not now lawfully triable at any court of oyer and terminer or gaol delivery.

(*t*) 2 Inst. 49; 3 Inst. 28, 30; R. v. Lord Vaux, 1 Bulst. 197.

[the indicted peer. This precept was formerly issued to summon only eighteen or twenty, selected from the body of the peers. Afterwards the number came to be indefinite; and the custom then was, for the Lord High Steward to summon as many as he thought proper, (but latterly not less than twenty-three;) and that those lords only should sit upon the trial (*u*): which threw a monstrous weight into the hands of the Crown, and this its great officer, of selecting only such peers as the then predominant party should most approve of. And accordingly, when the Earl of Clarendon fell into disgrace with Charles the second, there was a design formed to prorogue the parliament, in order to try him by a select number of peers; it being doubted whether the whole house could be induced to fall in with the views of the court (*x*).

But now by statute 7 Will. III. c. 3, upon all trials of peers or peeresses for treason or misprision,—all the peers who have a right to sit and vote in parliament shall be summoned, at least twenty days before such trial, to appear and vote therein; and every lord appearing, and taking the proper oaths, shall vote in the trial of such peer (*y*). The decision in this court is by the majority; but a majority cannot convict, unless it consists of twelve or more (*z*).

During the session of parliament, the trial of an indicted peer, is not in the court of the Lord High Steward, but (as already mentioned) before the peers in the high court of parliament (*a*). [It is true, a Lord High Steward is always appointed in that case, to regulate and add

(*u*) Kelynge, 56.

(*x*) Carte's Life of Ormonde, vol. ii.

(*y*) Mr. Christian, in his edition of Blackstone, remarks that inasmuch as a peer cannot have the benefit of a challenge like a commoner, (1 Harg. St. Tr. 198, 388,) it is somewhat surprising that this manifest improvement of the law and constitution, was not extended to trials of peers for *all* felonies in the court of the lord high steward.

(*z*) Christian's Blackstone, vol. iv. p. 262, note.

(*a*) Vide sup. p. 302; Fost. 141.

[weight to the proceedings: but he is rather in the nature of a speaker *pro tempore*, or chairman of the court, than the judge of it: for the collective body, the peers, are therein the judges both of law and fact; and the High Steward has a vote with the rest, in right of his peerage. But in his own court the Lord High Steward is the sole judge of matters of law, as the lords triers are in matters of fact; and as they may not interfere with him in regulating the proceedings of the court, so he has no right to intermix with them in giving any vote upon the trial (*b*). And upon the conviction and attainder of a peer for murder, in full parliament,—it hath been holden by the judges, that in case the day appointed in the judgment for execution should lapse before execution done, a new time for it may be appointed by the high court of parliament (during its sitting) though no High Steward be existing: or, (in the recess of parliament,) by the Queen's Bench,—the record being, for such purpose, removed into that court (*c*).

It has been a point of some controversy, whether the bishops have now a right to sit in the court of the Lord High Steward, to try indictments of treason and misprision. Some incline to imagine them included under the general words of the statute of King William (*d*), "all peers who have a right to sit and vote in parliament," but the expression had been much clearer if it had been "all *lords*," and not "all *peers*;" for though bishops, on account of the baronies annexed to their bishoprics, are clearly lords of parliament, yet, their blood not being ennobled, they are not universally allowed to be peers with the temporal nobility; and perhaps this word might be inserted purposely with a view to exclude them. However, there is no instance of their sitting on

(*b*) St. Tr. vol. iv. 214, 232, 233. See Lord Campbell's Lives of the Chancellors, vol. iii. p. 557, n.

(*c*) Fost. C. L. 139.

(*d*) 7 Will. 3, c. 3.

[trials for capital offences, even upon impeachments and indictments in full parliament, much less in the court we are now treating of: for indeed they usually withdraw voluntarily, but enter a protest declaring their right to stay. It is observable, that in the eleventh chapter of the Constitutions of Clarendon, made in the parliament of the eleventh year of Henry the second, they are expressly excused, rather than excluded, from sitting and voting on trials, when they come to concern life or limb: "*episcopi, sicut cæteri barones, debent interesse judiciis cum baronibus, quousque perveniatur ad diminutionem membrorum, vel ad mortem:*" and Becket's quarrel with the king hereupon, was not on account of the exception, (which was agreeable to the canon law,) but of the general rule, which compelled the bishops to attend at all. And the determination of the house of lords in the Earl of Danby's case (*e*), which has ever since been adhered to, is consonant with these constitutions: "that the lords spiritual "have a right to stay and sit in court in capital cases, "till the court proceeds to the vote of guilty, or not "guilty" (*f*). It must be noted that this resolution extends only to trials *in full parliament;* for to the court of the Lord High Steward, (in which no vote can be given, but merely that of guilty or not guilty,) no bishop, as such, ever was or could be summoned; and though the statute of King William regulates the proceedings in that court as well as in the court of parliament, yet it never intended to new-model or alter its constitution: and consequently does not give the lords spiritual any right in cases of blood, which they had not before (*g*). And what makes their exclusion more reasonable is, that they have no right to be tried themselves in the court of the Lord

(*e*) Lords' Journ. 15 May, 1679.

(*f*) This applies, it will be observed, only to judicial proceedings. Where the proceeding is a *legislative* one, as in the case of a bill of attainder, the bishops are entitled to remain till the end. (See May, Pr. Parl. 484.)

(*g*) Fost. 248.

[High Steward; and therefore, surely, ought not to be judges there (*h*). For the privilege of being thus tried depends upon nobility, rather than a seat in the house; as appears from the trial of popish lords, while incapable of a seat there; of lords under age; and of the Scots nobility, though not in the number of the sixteen representative peers: and from the trial of females; such as the queen consort or dowager, and of all peeresses by birth; and of peeresses by marriage also, unless they have, when dowagers, disparaged themselves by taking a commoner to their second husband.]

3. The Queen's Bench on its Crown side takes cognizance of all criminal causes,—from treason, down to the most trivial misdemeanor or breach of the peace (*i*). And not only may indictments be found therein by a grand jury and other presentments made (*k*), but hither also may indictments from all inferior courts be removed by writ of *certiorari:* though (under the provisions of the statute 16 & 17 Vict. c. 30) the removal can only take place where the indictment is against a body corporate not authorized to appear by attorney in the court below, or else where it

(*h*) See Bro. Ab. tit. Trial, 142.

(*i*) The reader will bear in mind that on the commencement of the Judicature Act, 1873, on the 2nd of November, 1874, the Court of Queen's Bench will form a division of the High Court of Justice thereby established. To this division is assigned all causes and matters (criminal as well as civil) which are at present within the exclusive cognizance of the Court of Queen's Bench (36 & 37 Vict. c. 66, s. 34). And, subject to any rules of court to be made under that Act, the practice and procedure in all criminal causes and matters, in the Supreme Court of Judicature (that is to say, in the High Court of Justice and in the Court of Appeal) are to be the same as at present (sect. 71). As to the Supreme Court of Judicature, vide sup. vol. III. p. 318.

(*k*) Accordingly a *grand jury* of the county of Middlesex may be summoned in the course of each Term, to attend the Queen's Bench, in order to dispose of any indictments which may be preferred therein; but this summons takes place only where the master of the crown office has received due notice of some business to be brought before the court. (35 & 36 Vict. c. 52.)

is made to appear to the Queen's Bench, by the party applying for the writ, that a fair and impartial trial cannot be had in the court below; or that a question of law of more than usual difficulty and importance is likely to arise upon the trial; or that a view of premises, or a special jury, may be required for the satisfactory trial of the case (*l*). The manner of trial in the Queen's Bench is, in felony or treason, at bar, that is, before the judges of the court sitting in *banc* (*m*); and in misdemeanors, it is at bar (in cases of sufficient consequence) or else at *nisi prius* (*n*). [The judges of the Queen's Bench are the supreme coroners of the kingdom: and it is the principal court of criminal jurisdiction, which is known to the laws of England; though the High Court of Parliament and the Court of the Lord High Steward, of which we have already spoken, are of greater dignity. For which reason, by the coming of the Queen's Bench into any county, (as it was removed to Oxford on account of the sickness in 1665,) all former commissions of *oyer* and *terminer*, and general gaol delivery, are at once absorbed and determined *ipso facto* (*o*): in the same manner as by the old Gothic and Saxon constitutions, "*obtinuit quievisse omnia inferiora judicia, dicente jus rege*" (*p*).

Into the Queen's Bench hath reverted all that was good and salutary of the jurisdiction of the court of

(*l*) 16 & 17 Vict. c. 30, s. 4. As to the leave and recognizance required before the writ is allowed, see also post, c. XIX.

(*m*) Woolrych's Crim. Law, p. 162.

(*n*) Where the record is in the Queen's Bench, either prosecutor or defendant may apply for a *special* jury. This, however, can only be in cases of misdemeanor, and not of treason or felony (6 Geo. 4, c. 50, s. 30). It may be remarked that, in certain cases, the trial is neither at bar nor at *nisi prius*, but at the *Central Criminal Court*, under the provisions of 19 & 20 Vict. c. 16 (vide post, c. XIX).

(*o*) But see 25 Geo. 3, c. 18; 32 Geo. 3, c. 48, and 9 Geo. 4, c. 9.

(*p*) Stiernh. l. 1, c. 2.

[*Star-chamber, camera stellata*(*q*); which was a court of very antient original (*r*);—re-modelled by statutes 3 Henry VII. c. 1, and 21 Henry VIII. c. 20,—consisting of divers lords spiritual and temporal, (being privy councillors,) together with two judges of the courts of

(*q*) This is said (Lamb. Arch. 154) to have been so called, either from the Saxon word ꝼteoꝑan, to steer or govern; or from its punishing the *crimen stellionatus*, or cozenage; or because the room wherein it sat, the old council chamber of the Palace of Westminster (Lamb. 148), was full of windows; or (to which Sir Edward Coke, 4 Inst. 66, accedes) because *haply* the roof thereof was at first furnished with gilded *stars*. As all these (says Blackstone, vol. iv. p. 266, *in notis*,) are merely conjectures (for no stars are now in the roof, nor are any said to have remained there so late as the reign of Elizabeth), it may be allowable to propose another conjectural etymology, as plausible perhaps as any of them. It is well known that, before the banishment of the Jews under Edward the first, their contracts and obligations were denominated in our antient records *starra* or *starrs*, from a corruption of the Hebrew word *shetàr*, a covenant (Tovey's Angl. Judaic. 32; Seld. Tit. of Hon. ii. 34; Uxor. Ebraic. i. 14). These starrs, by an ordinance of Richard the first, preserved by Hovenden, were commanded to be enrolled, and deposited in chests under three keys in certain places: one, and the most considerable, of which was in the King's Exchequer at Westminster; and no starr was allowed to be valid, unless it was found in some of the said repositories (Memorand. in Scacc. P. in the sixth year of Edward the first, prefixed to Maynard's Year Book of Edward the second, fol. 8; Madox, Hist. Exch. c. 7, ss. 4, 5, 6). The room at the Exchequer where the chests containing these starrs were kept, was probably called the *starr-chamber;* and, when the Jews were expelled the kingdom, was applied to the use of the king's council, sitting in their judicial capacity. To confirm this, the first time the star-chamber is mentioned in any record, it is said to have been situated near the receipt of the Exchequer at Westminster; (the king's council, his chancellor, treasurer, justices and other sages, were assembled "*en la chambre des esteilles pres la resceipt al Westminster*"—Claus. 41 Edw. 3, m. 13). For in process of time, when the meaning of the Jewish *starrs* was forgotten, the word *star-chamber* was naturally rendered in law French *la chambre des esteilles*, and in law Latin *camera stellata;* which continued to be the style in Latin, till the dissolution of that court.

It is remarked by Mr. Christian (Bl. Com. vol. iv. p. 267), in reference to the above note of Blackstone, that in one of the statutes of the University of Cambridge (*De computationo procuratorum*, Stat. Acad. Cant. p. 32), the antiquity of which is not known, the word *starrum* is twice used for a schedule or inventory.

(*r*) Lamb. Arch. 156.

[common law; without the intervention of any jury. Their jurisdiction extended legally over riots, perjury, misbehaviour of sheriffs, and other notorious misdemeanors, contrary to the laws of the land. Yet this was afterwards, as Lord Clarendon informs us, stretched "to the "asserting of all proclamations and orders of state; to "the vindicating of illegal commissions, and grants of "monopolies; holding for honourable that which pleased, "and for just that which profited; and becoming both a "court of law to determine civil rights, and a court of "revenue to enrich the treasury; the council table by "proclamations enjoining to the people that which was "not enjoined by the laws, and prohibiting that which "was not prohibited; and the Star-Chamber, which con-"sisted of the same persons in different rooms, censuring "the breach and disobedience to those proclamations by "very great fines, imprisonments, and corporal severities; "so that any disrespect to any acts of state, or to the "persons of statesmen, was in no time more penal, and "the foundations of right never more in danger to be "destroyed" (*s*). For which reasons it was finally abolished by statute 16 Car. I. c. 10, to the general joy of the whole nation (*t*).

(*s*) Hist. of Rebellion, b. 1 and 3.

(*t*) The just odium into which this tribunal had fallen before its dissolution has been the occasion that few memorials have reached us of its nature, jurisdiction and practice; except such as, on account of their enormous oppression, are recorded by the historians of the times. There are, however, to be met with some reports of its proceedings in Dyer, Croke, Coke, and other reporters of that age; and some in manuscript, of which Sir W. Blackstone possessed two: one from the fortieth year of Elizabeth, to the thirteenth of James the first; the other for the first three years of King Charles. And there is in the British Museum (Harl. MS. vol. 1, no. 1226) a very full, methodical and accurate account of the constitution and course of this court, compiled by William Hudson, of Gray's Inn, an eminent practitioner therein; and a short account of the same, with copies of all its process, may also be found in 18 Rym. Fœd. 192, &c. Hudson's Treatise of the Court of Star-chamber, is now published at the beginning of the second volume of Collectanea Juridica.

[4. The High Court of *Admiralty*, held before the *judge of the admiralty*,—has a criminal as well as a civil jurisdiction (*u*). In virtue thereof this court originally had cognizance of all crimes and offences committed either upon the sea or on the coasts, out of the body or extent of any English county; and by stat. 15 Ric. II. c. 3, acquired cognizance of death and mayhem happening in great ships being and hovering in the main stream of great rivers, below the bridges of the same rivers, which are then a sort of ports or havens; such as are the ports of London and Gloucester, though they lie at a great distance from the sea. But inasmuch as the Court of Admiralty proceeded without jury, in a method much conformed to the civil law, the exercise of its criminal jurisdiction was contrary to the genius of the law of England: insomuch as a man might be there deprived of his life by the opinion of a single judge, without the judgment of his peers. And besides, as innocent persons might thus fall a sacrifice to the caprice of a single man, so very gross offenders might, and did frequently, escape punishment; for by the rule of the civil law no judgment of death can be given against offenders, without proof by two witnesses, or a confession of the fact by themslves. This was accordingly always a great offence to the English nation; and therefore, in the eighth year of Henry the sixth, it was endeavoured to apply a remedy in parliament; which then miscarried for want of the royal assent.] However, by 28 Hen. VIII. c. 15, it was enacted, that all treasons, felonies, robberies, murders, and confederacies on the sea, or within the jurisdiction of the admiralty, should be tried by commissioners under the Great Seal; viz. the admiral, or his deputy, and three or four more, (among whom two common law judges

(*u*) 4 Inst. 134, 147. As to the transfer of the jurisdiction of this court, at the commencement of the Judicature Act, 1873, on the 2nd November, 1874, to the Supreme Court thereby established, vide sup. vol. III. pp. 319, 341. See also, in reference to its criminal jurisdiction, sup. p. 307, n. (*i*).

were usually appointed;) and that the indictment being first found by a grand jury of twelve men, should be afterwards tried by a petty jury; and that the course of proceedings should be according to the law of the land (*x*). Afterwards, by 4 & 5 Will. IV. c. 36—which first established the "Central Criminal Court," for offences committed in the metropolis and certain parts adjoining (*y*),—the judge of the admiralty was placed, (together with the lord mayor of London, the common law judges, and others,) among the judges of the new court: and it was provided, that under any commission of oyer and terminer and gaol delivery, to be issued under the authority of that Act,—such judges, or any two or more of them, might hear and determine any offences committed or alleged to be committed on the high seas, and other places within the jurisdiction of the admiralty; and might deliver the gaol of that court, of any person detained therein for such offence (*z*). Also by the 7 & 8 Vict. c. 2 (*a*), reciting that it was expedient that provision should be made for the trial of persons charged with offences committed at sea, or within the admiralty jurisdiction, without issuing any *special* commission as required by 28 Hen. VIII. c. 15,—it was enacted, that any justices of assize, oyer and terminer, or gaol delivery, might inquire of and determine all offences so committed; and that all indictments, trials and other proceedings before them in such cases, should be valid (*b*). And, finally, in each of the statutes of 24 & 25 Victoria, cc. 96, 97, 98, 99, 100, there is contained a clause to the effect that all indictable offences mentioned in those Acts respectively

(*x*) 4 Bl. Com. p. 269. See also 39 Geo. 3, c. 37, and 46 Geo. 3, c. 54.

(*y*) As to this court, vide post, p. 315.

(*z*) 4 & 5 Will. 4, c. 36, s. 22.

(*a*) As to this provision, see R. *v.* Serva, 2 C. & R. 53; R. *v.* Jones, ib. 165. As to warrants against persons charged with offences committed within the Admiralty jurisdiction, see 11 & 12 Vict. c. 42, s. 8.

(*b*) See also 11 & 12 Vict. c. 42, and The Queen *v.* Eyre, Law Rep., 3 Q. B. 487.

(which comprise larceny, malicious injuries to property, forgery, coinage offences, and offences against the person), committed within the jurisdiction of the admiralty of England or Ireland,—shall be deemed to be offences of the same nature, and liable to the same punishment, as if they had been committed upon the land in England or Ireland: and may be dealt with and tried in any place in which the offender shall be apprehended or be in custody (*c*). So that, upon the whole, the jurisdiction of the Court of Admiralty itself, for trial in England of offences committed at sea, or out of the body of an English county (which was once indispensable from the inability of the common law courts to try offences so committed) seems now to have been rendered almost or altogether unnecessary.

[These four courts may be held in any part of the kingdom; and their jurisdiction extends over crimes that arise throughout the whole of it, from one end to the other. What follow are also of a general nature; but yet are of a local judisdiction, and confined to particular districts. Of which species are,—

5. The Courts of *Oyer and Terminer* and *General Gaol Delivery* (*d*); which are held before the royal commissioners,—among whom are usually two judges of the courts at Westminster,—twice at the least in the year in every county of the kingdom (*e*);] with an exception to

(*c*) See 24 & 25 Vict. c. 94, s. 9; c. 96, s. 115; c. 97, s. 72; c. 98, s. 50; c. 99, s. 36; and c. 100, s. 68. As to persons charged in any *colony* with offences committed on the seas, see 12 & 13 Vict. c. 96; 18 & 19 Vict. c. 91, s. 21.

(*d*) 4 Inst. 152, 168; 2 Hale, P. C. 22, 32; Hawk. P. C. b. 2, c. 5, s. 6. As to the transfer on the 2nd November, 1874, of the jurisdiction of these courts to the High Court of Justice established by the Judicature Act, 1873, vide sup. vol. III. pp. 347, 349; see also sup. p. 307, n. (*i*).

(*e*) Of late years, in certain of the assize towns, there are tried, under commissions issued in the vacation after Michaelmas Term, per-

be presently stated, as to the metropolis and parts of the adjacent counties. [These courts were mentioned in the preceding Book: and we then observed, that in what is usually called *the assizes*, the judges sit by virtue of four several authorities; viz., the commission of the peace, the commission of oyer and terminer, the commission of general gaol delivery, and the commission of *nisi prius;* one of which, (that of *nisi prius*,) being principally of a civil nature, was then explained at large. The authority by the commission of the peace has also been treated of, when we inquired into the nature and office of a justice of the peace (*f*); and in addition to what was there stated we may here remark, that all justices of the peace of any county, wherein the assizes are held, are bound by law to attend them, upon due notice given by the sheriff (*g*): or else are liable to a fine: in order to return recognizances, &c.: and to assist the commissioners in such matters as lie within their knowledge and jurisdiction, and in which some of them have probably been concerned by way of previous examination. But the commission of *oyer and terminer* gives the judges authority to hear and determine all treasons, felonies and misdemeanors committed within the county (*h*). This is directed to the judges and several others, or any two of them (*i*); but only the judges, or serjeants at law, the queen's counsel, and barristers with a patent of precedence (*j*), named in the commissions, are of the *quorum;* so that the rest cannot act without the presence of one of them (*k*). Under the commission of *oyer and terminer*, persons may be tried whether they are in gaol

sons charged with crimes not triable by law at the sessions, with a view to their more speedy deliverance. This is called the *Winter* Circuit.

(*f*) Vide sup. vol. II. pp. 648—651.

(*g*) Cro. Cir. c. 3.

(*h*) 4 Bl. Com. p. 270.

(*i*) In Middlesex the commission is directed to any *four* of them. (4 Chit. Crim. Law, 145; 1 Saund. 249 (*a*).)

(*j*) 13 & 14 Vict. c. 25.

(*k*) As to the forms of the commissions and of the writs by which they are accompanied, see 4 Chit. Crim. Law, 129, &c.

[or at large (*m*); but the words are to "inquire, hear, and determine:" so that by virtue of this commission, the judges can only proceed upon an indictment found at the same assizes; for they must first inquire, by means of the grand jury or inquest, before they are empowered to hear and determine by the help of the petit jury (*n*). Therefore they have besides a commission of general *gaol delivery:* which empowers them to try, and deliver every prisoner who shall be in the gaol when they arrive at the circuit town (*o*); whenever or before whomsoever indicted, or for whatever crime committed (*p*). It was antiently the course to issue special writs of gaol delivery for each particular prisoner, which were called the writs *de bono et malo* (*q*); but these being found inconvenient and oppressive, a *general* commission for all the prisoners has long been established in their stead. So that, one way or other, the gaols are in general cleared, and all prisoners tried, punished, or delivered, at least twice in every year,—a constitution of singular use and excellence. Sometimes, also, upon urgent occasions, the sovereign issues a special or extraordinary commission of oyer and terminer and gaol delivery, confined to those offences which stand in need of immediate inquiry and punishment; upon which the course of proceeding is much the same, as upon general and ordinary commissions.]

What has been stated applies to courts of oyer and terminer and gaol delivery throughout the realm at large; but for the metropolis and adjacent parts, a different constitution is provided. For by 4 & 5 Will. IV. c. 36, a new court was established for trial of offences committed in London, Middlesex, and certain suburban parts of Essex, Kent, and Surrey (*r*);—called *the Central*

(*m*) 1 Chit. Crim. Law, 144.

(*n*) Hawk. P. C. b. 2, c. 5, s. 31.

(*o*) That is, either in actual custody or out on bail, and so in gaol by construction of law. (1 Chit. Crim. Law, 146.)

(*p*) 2 Hale, P. C. 32, 34.

(*q*) 2 Inst. 43.

(*r*) Indictments found at the different sessions of the peace, held

Criminal Court (*s*); the judges or commissioners whereof are the lord mayor of London; the Lord Chancellor or lord keeper; the judges of the courts at Westminster; the judge of the admiralty; the dean of the arches; the aldermen of London; the recorder and common serjeant of London; the judge of the city of London court; any person who has been Lord Chancellor or lord keeper, or a judge of any of the courts at Westminster; and such others as the Crown shall from time to time appoint (*t*). And it is provided that the Crown may issue its commission of oyer and terminer and gaol delivery to such court (*u*); and that the said judges, or any two or more of them (*v*), shall hold a session in the city of London or suburbs thereof, at least twelve times in every year (and oftener if need be),—such times to be fixed by General Orders of the said court; which Orders any eight or more

within the jurisdiction of the Central Criminal Court, may be removed to that court by *certiorari* (4 & 5 Will. 4, c. 36, s. 16). In this court, also, offences committed out of its jurisdiction may nevertheless be tried by order of the Queen's Bench, under 19 & 20 Vict. c. 16, and 25 & 26 Vict. c. 65.

(*s*) Before the establishment of the Central Criminal Court, there existed "the court of the Sessions house in the Old Bailey," where the sessions of oyer and terminer and general gaol delivery for the city of London and the county of Middlesex, were holden eight times in the year. It may be remarked, that by 4 & 5 Will. 4, c. 36, s. 13, it was required that no indictment should be presented before the grand jury of the Central Criminal Court, unless the party prosecuting first entered into recognizances to prosecute, but this enactment was repealed by 9 & 10 Vict. c. 24, s. 2. By 19 & 20 Vict. c. 16, ss. 22, 23, however, the court is enabled, in cases ordered by the Queen's Bench to be tried there under that Act, to require (if it see fit) either the person charged, or the prosecutor and witnesses, to enter into recognizances.

(*t*) 4 & 5 Will. 4, c. 36, s. 1. Among the persons named in the text, those who usually sit to try prisoners in the Central Criminal Court, are certain of the judges of the superior courts of law, the recorder, the common serjeant, and the judge of the city of London Court.

(*u*) Sect. 2.

(*v*) As to the effect of these words, see Leverson *v.* The Queen, Law Rep., 4 Q. B. 394.

of the superior judges are empowered from time to time to make (*x*).

6. The Court of *General Quarter Sessions* of the peace is a court that must be held, in every county, once in every quarter of a year (*y*): and by statute 11 Geo. IV. & 1 Will. IV. c. 70, s. 35, the quarter sessions are appointed to be held in the first week after the 11th day of October; the first week after the 28th day of December; the first week after the 31st day of March; and the first week after the 24th day of June (*z*). [This court is held before two or more justices of the peace (*a*); one of whom must be of the *quorum* (*b*). Its jurisdiction, by statute 34 Edw. III. c. 1, extended in general to the trying and determining of all felonies and trespasses whatsoever,

(*x*) 4 & 5 Will. 4, c. 36, s. 15.

(*y*) 4 Inst. 170; 2 Hale, P. C. 42; Hawk. P. C. b. 2, c. 8. As to the origin of this court, see Harding *v.* Pollock, 6 Bing. 30. This court is called "the general quarter sessions of the peace," when held quarterly; when held otherwise, "the general sessions of the peace." (See R. *v.* Justices of Carmarthen, 4 B. & Ald. 291.) As to the general sessions of the peace in Middlesex, see 7 & 8 Vict. c. 71, ss. 2, 3; 22 & 23 Vict. c. 4, s. 4.

(*z*) By 4 & 5 Will. 4, c. 47, however, after reciting that in some counties of England and Wales the time usually fixed for holding spring assizes interferes with the due holding of the quarter sessions, in the first week after the 31st of March; and that though the justices have authority to hold general sessions of the peace at other times of the year, besides those specified in 11 Geo. 4 & 1 Will. 4, c. 70, such sessions are not *quarter sessions* within the intent of various Acts of parliament, which give jurisdiction to the justices of the peace in their quarter sessions, or in their general quarter sessions,—it is enacted, that to prevent the interference of the spring assizes with the April quarter sessions, the justices of the Epiphany sessions may, (if they see occasion,) name two of their body to fix some day for holding the next general quarter sessions, not earlier than 7th of March, nor later than 22nd of April.

(*a*) As to justices of the peace generally, vide sup. vol. II. pp. 642—651.

(*b*) As to the powers of the justices, to divide themselves into several courts of sessions of the peace for dispatch of business, see 7 Will. 4 & 1 Vict. c. 19, s. 4; 14 & 15 Vict. c. 55, s. 15; 21 & 22 Vict. c. 73, ss. 9—11. See also 1 & 2 Vict. c. 4, to remove doubts as to the legality of summoning juries for the trial of prisoners at *adjourned* quarter sessions.

[committed within the county; but it was never usual to try in this court any greater offences than small felonies; their commission providing that if any case of difficulty arose, the justices of the peace should not proceed to judgment, but in the presence of one of the justices of the Queen's Bench or Common Pleas, or of one of the judges of assize; and therefore murders, and other capital felonies, were usually remitted for a more solemn trial at the assizes (*c*).] And now it is expressly provided, by statute, that the justices of any county shall not, at any general or quarter sessions, try any prisoner for treason, murder or capital felony; nor for any felony, which when committed by a person not previously convicted of felony, is punishable with penal servitude for life (*d*); nor for any of the particular offences enumerated in 5 & 6 Vict. c. 38 (*e*). They are also restrained from trying persons

(*c*) By 11 & 12 Vict. c. 78, the court of quarter sessions is enabled to reserve any question of law for the consideration of the justices of either bench and of the barons of the Exchequer.

(*d*) See 4 & 5 Vict. c. 56; 5 & 6 Vict. c. 38; 20 & 21 Vict. c. 3.

(*e*) These are,—1. Misprision of treason. 2. Offences against the queen's title, prerogative or government, or against either house of parliament. 3. Offences subject to the penalties of *præmunire*. 4. Blasphemy and offences against religion. 5. Administering or taking unlawful oaths. 6. Perjury and subornation of perjury. 7. Making or suborning false oaths, &c., punishable as perjuries or misdemeanors. 8. Forgery. 9. Maliciously firing corn, grain, &c., wood, trees, &c., or heath, gorse, &c. 10. Bigamy, and offences against the laws relating to marriage. 11. Abduction of women and girls. 12. Concealing births. 13. Seditious, blasphemous, or defamatory libels. 14. Bribery. 15. Unlawful combinations and conspiracies, with certain exceptions. 16. Stealing, &c. records, &c. 17. Stealing, &c. bills, &c., and written documents relating to real estate. The Act also included offences against the bankrupt laws, but by the express provision of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71, s. 20), these may now be tried at the quarter sessions.

Courts of general or quarter sessions are also restrained, by 9 Geo. 4, c. 69, from trying the offence of three or more persons pursuing game by night. They were also prohibited by 9 & 10 Vict. c. 25, from trying any of the offences (chiefly falling under the class of malicious injuries to property) made punishable by that Act. It may, however, be noticed, that the 9 & 10 Vict. c. 25 is repealed by 24 & 25 Vict. c. 95, and that no prohibitory clause to

charged with fraudulent practices, as *agents, trustees, bankers,* or *factors* under the Larceny Act of 1861 (*f*). [Neither can they try any newly-created offence, without express power given them by the statute which creates it (*g*). But there are many offences and particular matters, which by particular statutes belong properly to this jurisdiction, and ought to be prosecuted in this court,—as the smaller misdemeanors and felonies; and especially offences relating to the game, highways, ale houses, bastard children, the settlement and provision for the poor, servants' wages, and apprentices (*h*).] Some of these are proceeded upon by indictment; others by way of *appeal* from the orders or convictions of justices out of sessions; and others in a summary way by motion and order thereupon. An order of the court of quarter sessions may, as the general rule, unless prevented by the provisions of some particular statute, be removed into the Court of Queen's Bench by writ of *certiorari facias* (*i*); and be there either quashed or confirmed (*k*). But the removal of an *indictment* can (as we have seen) now only take place under certain circumstances (*l*). [The records or rolls of the sessions, are committed to the custody of a special officer, denominated the *custos rotulorum;* who is always a justice of the quorum, and, "among them of the quorum," saith Lambard, "a man for the most part especially picked out either for wisdom, countenance or credit" (*m*). The nomination of the *custos rotulorum* is by the royal sign manual; and to him the nomination

the same effect is inserted in the 24 & 25 Vict. c. 97, the Malicious Injuries to Property Act, 1861.

(*f*) 24 & 25 Vict. c. 96, s. 87.

(*g*) R. *v.* Bugga, 4 Mod. 379; Salk. 406.

(*h*) See Lamb. Eirenarcha, and Burn's Justice.

(*i*) Hawk. P. C. b. 2, c. 27, ss. 22, 23.

(*k*) See R. *v.* Joseph, 1 W. W. & H. 419; R. *v.* Joule, 5 A. & E. 539; R. *v.* Higgins, ibid. 554. As to the removal of the orders of quarter sessions into the Queen's Bench, to be enforced there, 12 & 13 Vict. c. 45, s. 18. (Hawker *v.* Field, 1 L. M. & P. 606.)

(*l*) Vide sup. p. 307.

(*m*) B. 4, c. 3.

[of the *clerk of the peace* belongs,—an officer who acts as clerk to the court of quarter sessions, and records all their proceedings (*n*).]

As regards the county of Middlesex in particular,—it has been enacted, by 7 & 8 Vict. c. 71, (amended by 22 & 23 Vict. c. 4,) that there shall be holden for that county two sessions, or adjourned sessions, of the peace in every calendar month; and that the first sessions in January, April, July and October, respectively, shall be the general quarter sessions of the county (*o*); and that the second sessions in January, April, July and October, shall be adjournments of the general quarter sessions. It is also provided therein, that it shall be lawful for her majesty to appoint a person,—being a serjeant, or a barrister at law of not less than ten years' standing, and in the commission of the peace for the county, and qualified by law to act as justice of the peace,—to be the Assistant Judge of the said court of sessions of the peace; who shall preside at the hearing of all appeals, on the trials of all felonies and misdemeanors, and all matters connected therewith; and who shall hold his office during good behaviour (*p*).

(*n*) 37 Hen. 8, c. 1; 1 W. & M. st. 1, c. 21; Harding *v.* Pollock, 6 Bing. 25. As to the suspension or dismissal of the *clerk of the peace*, see 1 W. & M. st. 1, c. 21, s. 6; 27 & 28 Vict. c. 65; The Queen *v.* Hayward, 2 B. & Smith, 585; Wilde *v.* Russell, Law Rep., 1 C. P. 722. He is to take the custody of such documents as are directed to be deposited with him, under the standing orders of either house of parliament. (7 Will. 4 & 1 Vict. c. 83; see R. *v.* Payn, 6 A. & E. 392.) As to his remuneration (which used to be by fees, but may now, at the discretion of the justices, be by salary), see 14 & 15 Vict. c. 55, s. 9; and see also 18 & 19 Vict. c. 126, s. 18. As to conveyances of land, &c., to the clerk of the peace or treasurer of the county, see 21 & 22 Vict. c. 92. As to the clerk of the peace for the County Palatine of Lancaster, see 35 & 36 Vict. c. 78.

(*o*) It is enacted by 22 & 23 Vict. c. 4, s. 4, that every general sessions for Middlesex shall have the powers, &c., of a general *quarter* sessions of that county.

(*p*) In cases of sickness or unavoidable absence, or such occasion as shall be allowed by a secretary of state, the assistant judge may appoint from time to time a deputy. (7 & 8 Vict. c. 71, s. 8.) By 14 & 15

In many corporate towns or boroughs, there is also a court of quarter sessions of the peace; having, in general, the same jurisdiction in the trial of offences and other matters arising within the limits of the borough, as the county quarter sessions within the county (*q*). Of such court, the recorder of the borough is, by 5 & 6 Will. IV. c. 73, s. 105, constituted the sole judge: and he is, by that statute, directed to hold the court once in every quarter of a year; or at such other and more frequent times as in his discretion he may think fit, or as her majesty may direct.

7. [The *Sheriff's Tourn*, or *rotation*, was a court of record, appointed to be held twice every year, within a month after Easter and Michaelmas, before the sheriff in different parts of the county (*r*): being indeed only the *turn* of the sheriff to keep a court leet, in each respective hundred (*s*). This therefore was the great court leet of the county, and out of it, for the ease of the sheriff, was taken,—

8. The *Court Leet*, or *View of Frank Pledge* (*t*); which is a court of record, appointed to be held once in the year and not oftener, within a particular hundred, lordship, or manor, before the steward of the leet (*u*): being the king's court granted by charter to the lords of those hundreds or manors. Its original intent was to view the frank pledges, that is, the freemen within the liberty:

Vict. c. 55, s. 14, the qualification for such deputy is, that he shall be of ten years' standing at the bar; but he need not be in the commission of the peace, as was required under 7 & 8 Vict. c. 71. By 22 & 23 Vict. c. 4, provisions are also made for the appointment of a temporary assistant judge in case of need.

(*q*) 5 & 6 Will. 4, c. 76, ss. 103, 105, 118. It is to be observed, that all the restrictions expressed by statute, with regard to the trial of certain offences at general or quarter sessions, mentioned sup. pp. 318, 319, in reference to the quarter sessions for the *county*, equally apply to the borough quarter sessions.

(*r*) 4 Inst. 259; 2 Hale, P. C. 69; Hawk. P. C. b. 2, c. 10.

(*s*) Mirr. c. 1, ss. 13, 16.

(*t*) 4 Inst. 261; Hawk. P. C. b. 2, c. 11.

(*u*) Mirr. c. 1, s. 10.

[who, we may remember, according to the institution of the great Alfred, were all mutually pledges for the good behaviour of each other (*v*). Besides this, the preservation of the peace, and the chastisement of divers minute offences against the public good, were the objects both of the court leet, and of the sheriff's tourn: which had exactly the same jurisdiction, one being only a larger species of the other: extending over more territory, but not over more causes. All freeholders within the precinct were obliged to attend them, and all persons commorant therein: which commorancy consisted in usually lying there: a regulation which owes its original to the laws of king Canute (*x*). But persons under twelve and above sixty years old; peers; clergymen; women; and the king's tenants in antient demesne,—were always excused from attendance there: all others being bound to appear upon the jury, (if required,) and make their due presentments. It was also antiently the custom to summon all the king's subjects, as they respectively grew to years of discretion and strength, to come to the court leet, and there take the oath of allegiance to the king. The other general business of the leet and tourn, was to present by jury all crimes whatsoever that happened within their jurisdiction: and not only to present, but also to punish, all trivial misdemeanors;—as all trivial debts were recoverable in the court baron and sheriff's county court:—justice, in these minuter matters of both kinds, being brought home to the doors of every man by our antient constitution (*y*). The objects of their jurisdiction were therefore unavoidably very numerous; being such as in some degree, either less or more, affected the public weal, or good government of the district in which they arose; from common

(*v*) Vide sup. vol. I. p. 127.

(*x*) Part 2, c. 19.

(*y*) Blackstone (vol. iv. p. 274) observes, that, in the Gothic constitution, the *hæreda*, which answered to our court leet, "*de omnibus quidem cognoscit, non tamen de omnibus judicat;*" and he cites Stiern. de Jure Goth. l. 1, c. 2.

[nuisances and other material offences against the king's peace and public trade, down to eaves-dropping, waifs, and irregularities in public commons. But both the tourn and the leet fell by degrees into a declining way (*z*): a circumstance owing, in part, to the discharge granted by the statute of Marlborough, (52 Hen. III. c. 10,) to all prelates, peers, and clergymen, from their attendance upon these courts; which occasioned them to grow into disrepute. And hence their business, for the most part, gradually devolved upon the quarter sessions; which indeed it was particularly directed to do, in some cases, by stat. 1 Edw. IV. c. 2. It also, in some instances, devolved upon the justices out of sessions. And now both tourn and leet have fallen, in most parts of the kingdom, into total disuetude (*a*).

9. The Court of the *Coroner* is also a court of record, to inquire, when any one dies in prison, or comes to violent or sudden death, by what manner he came to his end (*b*). But of the coroner and his office, we treated at large in a former volume, among the public officers of the kingdom, and therefore shall not here repeat our inquiries; only mentioning his court, by way of regularity, among the criminal courts of the nation (*c*).

10. The Court of the *Clerk of the Market*, is properly incident to every fair and market in the kingdom, to punish misdemeanors therein (*d*);—as a court of *pied poudre* is to determine all disputes therein, relating to private or civil property. The object of this jurisdiction was principally the recognizance of weights and measures; to try whether they be according to the true standard thereof or no (*e*). Which standard was antiently committed to the

(*z*) See Colebrook *v.* Elliott, 3 Burr. 1864.

(*a*) In some places, however, a "court leet" is still periodically held before the steward, but only for the transaction of the administrative business of the manor.

(*b*) 4 Inst. 271; 2 Hale, P. C. 53; Hawk. P. C. b. 2, c. 9.

(*c*) Vide sup. vol. II. pp. 634—642.

(*d*) 4 Inst. 273.

(*e*) See stat. 17 Car. 2, c. 19; vol. II. pp. 516—520.

[custody of the *bishop*, who appointed some clerk under him to inspect the abuse of them more narrowly: and hence this officer, though usually a layman, was called the *clerk* of the market (*f*). If they were not according to the standard, then, besides the punishment of the party by fine, the weights and measures themselves were directed to be burnt.] This is the most inferior court of criminal jurisdiction in the kingdom: but its functions, as regards weights and measures seem in a great measure to be now superseded by the provisions of 5 & 6 Will. IV. c. 63; which provide for the appointment of inspectors of weights and measures, whose duty it is to attend with the stamps and copies of the imperial standard weights in their custody, at the several market towns; and examine and stamp, (if found correct,) such weights and measures as shall be brought to them for that purpose; giving, if required, a certificate of such stamping. And it is lawful, under the above Act, for any magistrate, or authorized inspector, to enter at all reasonable times any shop or other place, where goods are exposed for sale, in order to examine the weights and measures therein used; and if found incorrect, the faulty weights and measures may be seized and forfeited; and the person in whose possession the same shall be found, or who shall obstruct such examination, is liable to a penalty of 5*l.* (*g*).

Secondly. As to criminal courts *of a private or special jurisdiction.*

[These are of a confined and partial jurisdiction: extending only to particular places, which the royal favour, confirmed by Act of Parliament, distinguished by the privilege of having peculiar courts of their own, for the punishment of crimes and misdemeanors arising within

(*f*) Bac. of English Government, b. 10, c. 8.

(*g*) See Hutchins *v.* Reeves, 9 Mee. & W. 747. As to weights and measures, vide sup. vol. II. pp. 516—520.

[the bounds of their cognizance. And we shall only here refer to two of these tribunals, which, as a class, have in modern times fallen into disrepute and oblivion.

1. The Court of the *Lord Steward* of the King's *Household*, or, in his absence, of the treasurer, comptroller, and steward of the *marshalsea*, was created by statute 33 Hen. VIII. c. 12, with a jurisdiction to inquire of, hear, and determine "all treasons, misprisions of treason, murders, manslaughters, bloodshed, and other malicious strikings," whereby blood should be shed in or within the limits (that is, within two hundred feet of the gate) of any of the palaces or houses of the king, or any other house where the royal person should abide. The proceedings were by jury, both a grand and petty one, as at common law; taken out of the officers and sworn servants of the king's household: and the form and solemnity of the process, particularly with regard to the execution of the sentence for cutting off the hand,—which is part of the punishment for shedding blood in the king's court,—are very minutely set forth in the said statute: where the several offices of the servants of the household in and about such execution are also described; from the serjeant of the woodyard, who furnished the chopping-block, to the serjeant farrier, who was to bring hot irons to sear the stump.] But so much of the above Act "as relates "to the punishment of manslaughter and malicious "striking, by reason whereof blood shall be shed," was expressly repealed by 9 Geo. IV. c. 31; and the jurisdiction of the court itself has long since fallen into complete disuse.

2. The courts of the universities of Oxford and Cambridge have a criminal as well as a civil jurisdiction, and this of an extensive kind. The chancellor's court hath authority to determine all offences which are misdemeanors only, when committed by a member of the university; and even treason, felony and mayhem, if found to have been

committed by any member thereof, may be tried in the Court of the *Lord High Steward* of the university (*i*).

So far as Oxford is concerned this jurisdiction rests on a charter of the 7th June, in the second year of Henry the fourth (confirmed by statute 13 Eliz. c. 29,); [and by this charter cognizance is granted to that university of all indictments of treasons, insurrections, felonies, and mayhem, which shall be found in any of the royal courts against a scholar or privileged person; and they are to be tried before the high steward of the university, or his deputy; who is to be nominated by the chancellor of the university for the time being. But, when his office is called forth into action, such high steward must be approved by the lord high chancellor of England; and a special commission, under the Great Seal, is given to him and others, to try the indictment then depending, according to the law of the land, and the privileges of the university. When, therefore, an indictment is found at the assizes or elsewhere, against any scholar of the university or other privileged person, the vice-chancellor may claim the cognizance of it (*k*); and, (when claimed in due time and manner,) it ought to be allowed him by the judges of assize; and then it comes to be tried in the high steward's court. But the indictment must first be found by a grand jury, and then the cognizance claimed; for it is apprehended that the

(*i*) Blackstone (vol. iv. p. 277) treats only of the criminal jurisdiction of the University of *Oxford*. A similar jurisdiction is, however, enjoyed by that of Cambridge. (See Bac. Ab. tit. "Universities.") As to the jurisdiction exercised by the proctors over persons *not* members of the university, in order to protect the morals of the students, see Kemp *v.* Neville, 10 C. B., N. S. 523.

(*k*) See R. *v.* Agar, 5 Burr. 2820; Kendrick *v.* Kynaston, 1 Bla. Rep. 454; Hayes *v.* Long, 2 Wils. 310; Leasingby *v.* Smith, ibid. 406; R. *v.* Routledge, 2 Doug. 531; R. *v.* Grundon, Cowp. 319; Thornton *v.* Ford, 15 Exch. 634. The statute 19 & 20 Vict. c. xvii. s. 18, takes away all right of the University of *Cambridge* to claim cognizance in any proceedings (criminal or otherwise) to which any person, *not* a member of the university, is party.

[high steward cannot proceed originally *ad inquirendum:* but only, after inquest in the common law courts, *ad audiendum et determinandum.* Much in the same way as when a peer is to be tried in the court of the lord high steward of Great Britain, the indictment must first be found at the assizes or in the Queen's Bench: and then, in consequence of a writ of *certiorari,* transmitted to be finally heard and determined, before his grace the lord high steward and the peers.

When the cognizance is so allowed,—if the offence be *inter minora crimina,* or a misdemeanor only, it is tried before the ordinary judge of the chancellor's court. But if it be for treason, felony or mayhem, it is then, and then only, to be determined before the high steward, under the king's special commission to try the same. The process of the trial is this: The high steward issues one precept to the sheriff of the county, who thereupon returns a panel of eighteen freeholders; and another precept to the bedells of the university, who thereupon return a panel of eighteen matriculated laymen, "*laicos privilegio universitatis gaudentes.*" And by a jury formed *de medietate,*—half of freeholders and half of matriculated persons,—is the indictment to be tried: and that in the Guildhall of the city of Oxford. And if execution be necessary to be awarded, in consequence of finding the party guilty of a capital offence, the sheriff of the county must execute the university process: to which he is annually bound by an oath.

These proceedings have been described with some minuteness, on account of the importance of the privilege; but in modern times the occasions for reducing them into practice have been happily very rare; nor will it perhaps ever be thought advisable to revive them, though it is not a right that rests merely *in scriptis,* or theory, but has formerly been carried into execution. There are several instances,—one in the reign of Queen Elizabeth, two

[in that of James the first, and two in that of Charles the first, where indictments for murder have been challenged by the vice-chancellor at the assizes, and afterwards tried before the high steward, by jury. The commissions under the Great Seal, the sheriff's and bedell's panels, and all the other proceedings on the trial of the several indictments,—are still extant in the archives of the university.]

CHAPTER XV.

OF SUMMARY CONVICTIONS.

[WE are next, according to the plan we laid down, to take into consideration the proceedings which obtain in the several courts of criminal jurisdiction, in order to the punishment of offences (*a*). These proceedings are divisible into two kinds, *summary* and *regular:* the former of which shall be briefly explained, before we enter on the latter, which will require a more thorough and particular examination.

By a *summary* proceeding, is meant principally such as is directed by several Acts of Parliament, (for the common law is a stranger to it, unless in the case of contempts,) for the conviction of offenders, and the infliction of certain penalties created by those Acts. In a summary proceeding, there is no intervention of a jury; but the party accused is acquitted or condemned, according to the opinion of such person, as the statute has appointed for his judge. An institution designed professedly for the greater ease of the subject; by doing him speedy justice, and by not harassing the freeholders with frequent and troublesome attendances to try every minute offence.]

I. Of this summary nature are trials of frauds against, or breaches of, the laws of the *excise* and other branches of the revenue (*b*), many of which offences may be inquired into and determined either by the *commissioners of*

(*a*) Vide sup. p. 298.

(*b*) As to the *excise*, *stamps*, *taxes*, *customs*, &c., and other branches of the revenue, vide sup. bk. IV. pt. I. c. VII.

revenue(*c*), or before *justices of the peace* in the country (*d*). [And such convictions seem absolutely necessary for the due collection of the public money, and to be a species of mercy to the delinquents, who would be ruined by the expense and delay of frequent prosecutions by action or indictment; while the conduct of the commissioners has been such as seldom (if ever) to afford just grounds to complain of oppression (*e*).]

II. Another branch of summary proceedings, is that which takes place before justices of the peace, in respect of a variety of minor offences: viz. such as are prohibited only under pecuniary penalties (*f*). Some of these were formerly punishable at the court leet, while that court was still in use; but the greater part have been both created and placed under the summary jurisdiction of one or more of such justices, by the provisions of modern Acts of Parliament. But besides these minor offences, there are others of a graver description, which may also now be summarily dealt with in the same manner: and for which the punishment is in some cases a pecuniary penalty, and in others either a penalty or imprisonment with hard labour for a term of six months; or, in case of a second conviction, twelve months. Of these, our limits will only permit the

(*c*) Thus by 43 Geo. 3, c. 99, s. 33, a person commanded by the commissioners of taxes to pay duties, may, *if there be no sufficient distress on his premises*, be committed to prison by two district commissioners of taxes without bail or mainprize, till payment be made. And there are other statutory provisions for the protection of the revenue, of an equally stringent character.

(*d*) See 4 & 5 Vict. c. 20, s. 26 et seq.; 15 & 16 Vict. c. 61; 16 & 17 Vict. c. 137, s. 269 et seq. As to the justices of the peace, vide sup. bk. v. c. x.

(*e*) 4 Bl. Com. 281.

(*f*) Vide sup. p. 6. It may be remarked here, that by the 28 & 29 Vict. c. 127, an offender adjudged on summary conviction to pay a penalty not exceeding 5*l.*, and who fails to pay the same, may be committed to prison for a space of time (in no case exceeding *two months*) in proportion to the amount of penalty, according to a scale laid down in the Act. The statute does not apply to inland revenue prosecutions.

mention of some of the most important, such as the *abetment* of any offence made punishable by way of summary conviction under the 24 & 25 Vict. cc. 96, 97 (*g*),—the stealing, or killing with intent to steal, any *bird*, *beast* or other domestic or confined animal not the subject of larceny at the common law (*h*),—killing or wounding forest *deer* (*i*),—killing *dogs* or other animals (not being cattle) either the subject of larceny at common law or ordinarily kept confined (*k*),—stealing (or having in possession stolen) *dogs* (*l*),—stealing *fences* (*m*),—taking *fish* (*n*),—killing *hares* or *rabbits* (*o*),—doing certain *malicious injuries* to property (*p*),—*receiving* certain kinds of property knowing it to have been stolen (*q*),—injuring, &c., electric or magnetic *telegraphs* (*r*),—and injuring or stealing *trees* (*s*) or *vegetable productions* in gardens (*t*). As to *assaults* or *batteries*, also, the legislature has recently made fresh provisions with regard to the summary jurisdiction of justices. For, by 24 & 25 Vict. c. 100, s. 42 (*u*), when any person shall unlawfully assault or beat another, two justices of the peace, upon complaint of the party aggrieved, may hear and determine the offence: and may commit the offender to prison, with or without hard labour, for any period not exceeding two months; or else fine him to the extent of 5*l.*, and in default of payment, imprison him to the extent above mentioned. And if the assault or battery be on a male child, whose age, in the opinion of the justices, shall not exceed fourteen years, or be upon a female, the punishment inflicted may be by imprisonment, with or without hard labour,

(*g*) See 24 & 25 Vict. c. 96, s. 99; c. 97, s. 63.
(*h*) 24 & 25 Vict. c. 96, ss. 21, 22.
(*i*) Sect. 12.
(*k*) 24 & 25 Vict. c. 97, s. 41.
(*l*) 24 & 25 Vict. c. 96, ss. 18, 19.
(*m*) Sect. 34.
(*n*) Sect. 24.
(*o*) Sect. 17.
(*p*) 24 & 25 Vict. c. 97, s. 52.
(*q*) 24 & 25 Vict. c. 96, s. 97.
(*r*) 24 & 25 Vict. c. 97, ss. 37, 38.
(*s*) 24 & 25 Vict. c. 96, s. 33.
(*t*) Sects. 36, 37.
(*u*) Re-enacting 9 Geo. 4, c. 31, s. 27, repealed by 24 & 25 Vict. c. 95.

for as long as six months, or by a fine to the extent of 20*l.*, (or in default, imprisonment); and the offender may also be bound over to keep the peace for an additional six months (*x*). And the justices are required, in such charges, if on the hearing upon the merits they deem the assault or battery not proved, or justifiable, or too trifling to merit punishment, to give the party charged, in dismissing the complaint, a certificate of dismissal, which will operate as a bar to any further proceedings, civil or criminal (*y*). While, on the other hand, if they shall find that the assault or battery was accompanied by an attempt *to commit any felony*, or are of opinion that the same is, for any other circumstance, a fit subject for an indictment, they are to deal with the case as if they had no authority to determine the same. And there is also a proviso preventing the justices from determining any case in which a question shall arise as to the title to lands, tenements or hereditaments, or any interest therein or accruing therefrom (*z*); or as to any bankruptcy, or any execution under the process of any court of justice (*a*).

Moreover, in addition to the summary jurisdiction conferred in such cases as above mentioned by 24 & 25 Vict. cc. 96, 97, justices are now also enabled, in certain cases, to dispose, in the same manner, even of charges of larceny. For, first, with respect to *juvenile offenders*, it is provided by 10 & 11 Vict. c. 82 (*b*), and 13 & 14 Vict. c. 37, that any person apparently not more than *sixteen* years of age, who is charged with having committed, or attempted to

(*x*) 24 & 25 Vict. c. 100, s. 43.

(*y*) Sects. 44, 45. As to the species of assaults contemplated by this enactment, see Wilkinson *v.* Dutton, 3 B. & Smith, 821; as to the effect of a conviction or certificate on subsequent proceeding, see Vaughton, app. *v.* Bradshaw, resp., 9 C. B., N. S. 103; Hancock *v.* Somes, 1 E. & E. 795; Costar *v.* Hetherington, ib. 802; The Queen *v.* Ebrington, 1 B. & Smith, 688; Hartle *v.* Hindmarsh, Law Rep., 1 C. P. 553; The Queen *v.* Morris, ib. C. C. R. 90.

(*z*) See The Queen *v.* Pearson, Law Rep., 5 Q. B. 237.

(*a*) 24 & 25 Vict. c. 100, s. 46.

(*b*) The returns required by this Act to be made to a secretary of state, are abolished by 21 & 22 Vict. c. 67.

commit, (or with having been an aider, abettor, counsellor, or procurer, in the commission of,) any offence by law deemed, or declared to be, simple larceny, or punishable as simple larceny—may, on conviction before two justices in open court at petty sessions (*c*), be imprisoned by them for three months, with or without hard labour; to which whipping may be added, if the offender be a male not over the age of *fourteen* years (*d*). And the Acts provide that if such justices, on the hearing of the case, shall deem the offence not to be proved, or that it is not expedient to inflict any punishment, they shall dismiss the party charged, (with or without requiring sureties for his future good behaviour,) and shall furnish him with a certificate stating such dismissal: and that, on obtaining such certificate, or on having been summarily convicted under the Acts, he shall be discharged from all further or other proceedings for the same cause. While, on the other hand, if the justices shall be of opinion that the charge is, from any circumstance, a fit subject for prosecution by indictment,—or if either the person charged, or his parents, shall *object*, when interrogated on the subject, to the case being summarily disposed of under the provisions of the Acts,—then that the justices shall proceed with the charge as in other cases of felony. Secondly, by 18 & 19 Vict. c. 126, the summary jurisdiction given by the above Acts is extended, and is made no longer to apply exclusively to the case of *juvenile* offenders. For it is by this last Act enacted that where *any* person is charged at petty sessions (*e*) with simple larceny (the

(*c*) By 10 & 11 Vict. c. 82, s. 2, any metropolitan or other stipendiary police magistrate has the same jurisdiction as these Acts confer on two or more justices at petty sessions.

(*d*) See 13 & 14 Vict. c. 37, s. 1. By 25 & 26 Vict. c. 18, in awarding the punishment of whipping, the justices must specify the number of strokes (which must not exceed twelve), and the instrument (viz. a birch rod) to be used in inflicting them.

(*e*) See 19 & 20 Vict. c. 118, providing for the operation of this Act in places not being within a petty sessional division.

value of the property stolen, in the opinion of the justices, not exceeding five shillings), or is charged with having *attempted* to commit either larceny from the person or simple larceny;—the justices may proceed to hear and determine the charge in a summary way. And, (if the person charged shall confess the same, or the justices after hearing the whole case for the prosecution and for the defence shall find the charge to be proved,) the justices may convict such person and commit him to prison, with or without hard labour, for any period not exceeding three calendar months: or, (if they find the charge not proved,) shall dismiss the charge and deliver to the person so tried a certificate of dismissal. There is, however, a proviso, that if the person charged do not *consent* to have the case so heard and determined; or if it shall appear that the offence is one which, owing to the previous conviction of the party charged, is punishable with penal servitude (*e*); or if it shall appear that the charge, from any other circumstances, should be proceeded on by way of indictment, rather than be disposed of summarily;—the justices shall deal with the case, as if the Act had not passed. They are also authorized to dismiss the person charged without proceeding to a conviction,—if, on the hearing, there appear to be circumstances in the case which render it inexpedient to inflict any punishment.

Moreover the same Act contains a further provision, that where any person is charged at petty sessions with simple larceny, (the property alleged to have been stolen *exceeding* in value five shillings;) or with stealing from the person, or with larceny as a clerk or servant; and the evidence adduced by the prosecutor appears sufficient to put the person charged on his trial, and the case to be one which may properly be disposed of in a summary way and adequately punished under this Act,—such person may be asked, (after the charge has been reduced to writing,)

(*e*) Vide sup. p. 120, as to the case of larceny after a previous conviction for felony.

whether he is guilty or not thereof: and if he shall say that he is guilty, the justices may enter such plea on the proceedings; and may thereupon commit the offender to prison, with or without hard labour, for any term not exceeding six calendar months (*f*).

The course of proceeding upon summary convictions in general, was also regulated by the statute 11 & 12 Vict. c. 43 (*g*); which consolidates and amends the previous provisions on the subject (*h*). Its effect may be shortly stated as follows: —

Where a written *information* has been laid before any justice of the peace for any county or place in England or Wales, of any offence committed within his jurisdiction, and made punishable on summary conviction before one or more justices; or where any *complaint*, whether written or verbal, has been made before him in respect of a matter on which one or more justices have by law authority to make an order for the payment of money or otherwise;—he is to issue his *summons* to the party charged, requiring him to appear and answer the charge (*i*):

(*f*) 18 & 19 Vict. c. 126, s. 8. A single police magistrate within the metropolitan district (or any stipendiary magistrate within the place for which he is appointed) has all the jurisdiction given by this Act to the justices in petty sessions. (Sect. 16.)

(*g*) The statute 11 & 12 Vict. c. 43, does not affect any of the provisions in the Metropolitan Police Acts,—viz. 2 & 3 Vict. cc. 47, 71; 3 & 4 Vict. c. 84; 19 & 20 Vict. c. 2; 23 & 24 Vict. c. 135; 24 & 25 Vict. c. 51; 27 & 28 Vict. c. 55; nor in the London Police Act, 2 & 3 Vict. c. xciv. (and see 18 & 19 Vict. c. 120, s. 227.) Nor does the 11 & 12 Vict. c. 43, extend to proceedings under the excise or customs, &c., or as to paupers or lunatics, or under the Factory Acts. (Sect. 33.)

(*h*) In the time of Blackstone, the course of proceeding before magistrates had begun to take a regular shape, but seems to have been attended at a prior period with but little ceremony. For he says, (vol. iv. p. 283,) "The summons is now held to be an indispensable requisite, though the justices long struggled the point, forgetting that rule of natural reason expressed by Seneca.

'*Qui statuit aliquid, parte inauditâ alterâ,*
Æquum licet statuerit, haud æquus fuit.'"

(*i*) 11 & 12 Vict. c. 43, s. 1, and see sect. 29. The form of the summons and of the other instruments.

and, if the summons be disobeyed, he may then issue a *warrant* to apprehend him, and bring him before the court: or, if the justice think fit, he may,—in the case of an information, and provided it be supported by the oath of the prosecutor (*k*),—cause a warrant instead of a summons to be issued in the first instance (*l*). By the general rule, however, and subject to exception in any particular case where a different limitation as to time is provided by Act of Parliament, every such information or complaint must be laid or made within six calendar months from the time when the matter arose (*m*).

A summons may also be issued by the justice to compel the attendance of witnesses for the prosecutor, complainant, or defendant, as the case may be; and if the summons be disobeyed, the justice may issue his warrant for the same purpose; or, if satisfied by evidence upon oath that the witness will not attend, may issue such warrant in the first instance (*n*).

The hearing is to take place before one justice, or two or more, as may be directed in the Act of Parliament relating to the particular offence: or, where there is no direction, then before any one justice of the county or place where the matter has arisen; and the room where it takes place is to be deemed an open court, to which the public are to have access; and the prosecutor or complainant is to be allowed to conduct his case, and to examine and cross-examine the witnesses, by his counsel or attorney; and the like privilege is to be allowed to the defendant (*o*).

under this Act, is given in a schedule thereto.

(*k*) In proceedings before magistrates, (as well as in other cases,) an affirmation, in lieu of oath, will suffice in the case of Quakers, Moravians or Separatists; and (with respect to the *witnesses*) will also suffice in the case of *any* persons unwilling to be sworn from conscientious scruples.

(*l*) 11 & 12 Vict. c. 43, ss. 2, 3, &c.

(*m*) Sect. 11.

(*n*) Sect. 7.

(*o*) Sect. 12. See 18 & 19 Vict. c. 126, s. 4.

The hearing commences by a statement being made to the defendant of the substance of the information or complaint; and he may then show cause, if he can, why he should not be convicted or an order made (*p*); but if he do not admit the truth of what is charged, the court is to proceed to hear the prosecutor or complainant, or his witnesses; and afterwards the defendant and his witnesses; and also to hear such witnesses as the prosecutor or complainant may examine in reply, if the defendant shall have given any evidence except as to his general character: but the former shall not be entitled to make any observations upon the evidence given by the latter, nor the latter to make any observations upon the evidence given by the former in reply. And when the evidence, (all of which is to be upon oath,) shall be closed, the court shall proceed to convict, or make an order on, the defendant, or else dismiss the information or complaint, as the case may require; every conviction or order being drawn up in proper form, and lodged with the clerk of the peace, to be filed among the records of the quarter sessions (*q*); and a certificate of every order of dismissal being also drawn up and given to the defendant (*r*).

It is also competent to the court, in any case, to award costs, either against the defendant or the prosecutor or complainant, as the case may be. And for the amount of such costs, or of any pecuniary penalty or sum of money adjudged by a conviction or order, the court may issue a warrant of distress on the goods and chattels of the party: or, in default of distress (*s*), or where the statute simply directs imprisonment, may issue a warrant of commitment to prison (*t*). But if satisfied that a warrant of distress

(*p*) By 11 & 12 Vict. c. 43, s. 9, a *variance* between the information and the evidence adduced in support thereof, when not such as to have misled the party charged, is in general immaterial; when otherwise, it will be ground for an adjournment.

(*q*) See 18 & 19 Vict. c. 126, s. 7.

(*r*) 11 & 12 Vict. c. 43, s. 14. See 18 & 19 Vict. c. 126, ss. 1, 7.

(*s*) 11 & 12 Vict. c. 43, ss. 18, 22. (As to sect. 22, see 21 & 22 Vict. c. 73, s. 5.)

(*t*) 11 & 12 Vict. c. 43, ss. 20, 24.

would be ruinous to the defendant,—or that he has no goods,—the court is authorized to issue a warrant of commitment in any case, in lieu of a warrant of distress (*u*).

Power is also granted to the court, from time to time, to adjourn the proceedings as circumstances may require; and in the meantime either to allow the defendant to go at large, or to commit him to prison. Or, it may discharge him on entering into a recognizance, (either with or without sureties,) conditioned for his re-appearance at the adjournment day; which recognizance, if broken, is to be transmitted to the clerk of the peace to be proceeded upon (*x*).

Such is, in general, the method of summary proceedings before a justice or justices of the peace; though the particular statute which creates the offence, and authorizes its punishment, sometimes also specially points out the method in which offenders are to be convicted (*y*). It is to be remarked, however, that unless there be some enactment directing a prosecution before a justice or justices of the peace, no offence is capable of being so dealt with; but the offender must be proceeded against either by indictment or information in the usual way. It also deserves notice, that a summary conviction is not generally speaking conclusive; but is often subject to *appeal*. For in the greater number of the statutes which authorize this course of proceeding in particular instances, an appeal to the quarter sessions is also authorized (*z*). And in such cases, and if a question *of law*

(*u*) 11 & 12 Vict. c. 43, s. 19.

(*x*) Sects. 16, 29.

(*y*) See 5 & 6 Will. 4, c. 76, s. 127.

(*z*) The course of procedure in appeals to the sessions, is mainly regulated by 12 & 13 Vict. c. 45; which also, in most cases, enables the parties, (after notice of appeal given,) by consent, and leave of a judge of any one of the superior courts of law at Westminster, to take the opinion of such court on the facts stated in a *special case*, instead of prosecuting the appeal at the sessions. It may be also observed, that there is no appeal from the decision of justices as to an *assault* (as to which jurisdiction, vide sup. p. 331). Nor in cases disposed of by them under the Juvenile

be involved, the decision of the quarter sessions may, in its turn, be brought under the review of the Queen's Bench (*a*). Moreover, by 20 & 21 Vict. c. 43, it has been provided, with respect to informations or complaints summarily determined before a justice or justices, that any point of law arising thereon may be brought immediately before the Queen's Bench, Common Pleas, or Exchequer, in the form of a case stated,—the appellant first entering into a recognizance to submit himself to the original determination, unless it be reversed. It is provided, also, that any person, who shall appeal under these provisions, shall be taken to have abandoned any appeal to the quarter sessions, to which he would otherwise be entitled by law (*b*). And, on the other hand, the justice or justices themselves are now enabled by 35 & 36 Vict. c. 26, to file affidavits in the court before which such case has been brought, free of any expense by way of fee or stamp duty, in order to put the court in possession of the grounds of their decision, and of any facts which they may consider as having a material bearing on the question at issue; and this without the necessity of appearing by counsel.

III. [To this head of summary proceedings may also be properly referred the method immemorially used by the superior courts of justice, of punishing contempts by *attachment*, and the subsequent proceedings thereupon.

The contempts which are thus punished, are either *direct;* which openly insult or resist the powers of the courts, or the persons of the judges who preside there.

Offenders' Acts (vide sup. p. 332). Nor under the 18 & 19 Vict. c. 126 (vide sup. p. 333).

(*a*) The mode of proceeding in such cases is, in general, by *mandamus*, requiring the quarter sessions to *re-hear* the appeal. (See Dickinson, Q. S., 6th ed., p. 658.)

(*b*) 20 & 21 Vict. c. 43, s. 14. As to the practice on such appeals, see Reg. Gen. M. T. 1857; 18 C. B. 5, 6; and 3 C. B. (N. S.) 141. And as to the cases in which it lies, see Davys, app. Douglas, resp. 4 H. & N. 180.

[Or else are *consequential:* which, (without such gross insolence, or direct opposition,) plainly tend to create an universal disregard of their authority. The principal instances of either sort, that have been usually punished by attachment, are of the following kinds (*c*). 1. Those committed by inferior judges and magistrates: by acting unjustly, oppressively, or irregularly, in administering those portions of justice which are intrusted to their distribution; or by disobeying the royal writs issued out of the superior courts,—as by proceeding in a cause after it is put a stop to, or removed, by writ of prohibition, certiorari, error, supersedeas, and the like. For as the superior courts, have a general superintendence over all inferior jurisdictions,—any corrupt or iniquitous practices of subordinate judges are contempts of that superintending authority, whose duty it is to keep them within the bounds of justice. 2. Those committed by sheriffs, bailiffs, gaolers, and other officers of the court: by abusing the process of the law, or deceiving the parties, or by any acts of oppression, extortion, collusive behaviour, or culpable neglect of duty. 3. Those committed by attornies and solicitors, (who are also officers of the court,) by gross instances of fraud and corruption, injustice to their clients, or other dishonest practices. For the malpractice of the officers reflects some dishonour on their employers; and, if frequent or unpunished, creates among the people a disgust against the courts themselves. 4. Those committed by jurymen in collateral matters relating to the discharge of their office: such as making default when summoned; refusing to be sworn, or to give any verdict; eating or drinking without the leave of the court, and especially at the cost of either party; and other misbehaviour or irregularities of a similar kind;—but not in the mere exercise of their judicial capacities, as by giving a false or erroneous verdict. 5. Those committed

(*c*) Hawk. P. C. b. 2, c. 22.

[by witnesses: as by making default when summoned, refusing to be sworn or examined, or prevaricating in their evidence when sworn. 6. Those committed by parties to any suit or proceeding before the court: as by disobedience to any rule or order made in the progress of a cause, or by non-observance of an award duly made a rule of the court. However, the contempt in such cases as last mentioned, is in general consequential or constructive only; as it implies no actual disregard of authority, but may proceed from the poverty of the party. 7. Those committed by *any* persons: in the way of disobedience to the royal writs, or other disrespect to the court's authority. Some of these contempts may arise in the face of the court: as by rude and contumelious behaviour; by obstinacy, perverseness or prevarication; by breach of the peace, or any wilful disturbance whatever. Others in the absence of the party: as by disobeying or treating with disrespect the sovereign's writ, or the rules or process of the court; by perverting such writ or process to the purpose of private malice, extortion, or injustice; by speaking or writing contemptuously of the court, or judges acting in their judicial capacity (*e*); by printing false accounts, or even true ones, if against the prohibition of the court, of causes then depending in judgment (*f*); and by anything, in short, that demonstrates a gross want of that regard and respect which, when once courts of justice are deprived of, their authority, (so necessary for the good order of the kingdom,) is entirely lost among the people.

The process of attachments for these and the like contempts, must necessarily be as antient as the laws themselves. For laws without a competent authority to secure their administration from disobedience and contempt, would be vain and nugatory. A power, therefore, in the

(*e*) See In re Pollard, Law Rep., 2 P. C. Ca. 106.

(*f*) See R. *v.* Clement, 4 B. & Ald. 218; *In re* Skipworth, Law Times, 8th Feb. 1873, p. 269.

[supreme courts of justice to suppress such contempts, by an immediate attachment of the offender, results from the first principles of judicial establishments, and must be an inseparable attendant upon every superior tribunal (*g*). Accordingly we find it actually exercised, as early as the annals of our law extend. And though a learned author seems inclinable to derive this process from the Statute of Westminster the second, 13 Edward I. c. 39,—which ordains that in case the process of the king's courts be *resisted* by the power of any great man, the sheriff shall chastise the resisters by imprisonment, "*a quâ non deliverentur sine speciali præcepto domini regis*;" and that if the sheriff himself be resisted, he shall certify to the courts the names of the principal offenders, their aiders, consentors, commanders and favourers, and that by a special writ judicial they shall be *attached* by their bodies to appear before the court; and that if they be convicted thereof they shall be punished at the king's pleasure, without any interfering by any other person whatsoever:—yet he afterwards more justly concludes, that it is a part of the *law of the land*, and as such is *confirmed* by the statute of *Magna Charta* (*h*).

If the contempt be committed in the face of the court, the offender may be instantly apprehended, and imprisoned at the discretion of the judges, without any further proof or examination (*i*). But in matters that arise at a distance, and of which the court cannot have so perfect a knowledge, unless by the confession of the party or the testimony of others, if the judges, upon *affidavit*, see sufficient ground to suspect that an actual contempt has been committed, they either make a rule on the suspected

(*g*) It may be here remarked that the jurisdiction with regard to contempts, which belongs to *inferior* courts, and in particular to the county courts, is confined to contempts committed in the court itself; and in the case of the last mentioned courts is limited to the power given by the statutes under which they are created. See *Ex parte* Jolliffe, *In re* Lefroy, Law Times, 8th Feb. 1873, p. 269.

(*h*) Gilb. Hist. C. P. ch. 3.

(*i*) Standf. P. C. 73.

[party to show cause why an attachment should not issue against him (*k*); or, in very flagrant instances of contempt, the attachment issues in the first instance (*l*). This process of attachment is merely intended to bring the party into court; and, when there, he must either stand committed, or put in bail, in order to answer upon oath to such *interrogatories* as shall be administered to him, for the better information of the court with respect to the circumstances of the contempt (*m*). These interrogatories are in the nature of a charge or accusation; and must, by the course of the court, be exhibited within the first four days (*n*); and if any of the interrogatories be improper, the defendant may refuse to answer it, and move the court to have it struck out (*o*). If the party can clear himself upon oath, he is discharged; but, if perjured, may be prosecuted for the perjury (*p*). If he confesses the contempt, the court will proceed to correct him, usually by fine or by imprisonment, or by both (*q*). If the contempt be of such a nature, that, when the fact is once acknowledged, the court can receive no further information by interrogatories than it is already possessed of, the defendant may be admitted to make such simple acknowledgment, and receive his judgment, without answering to any interrogatories; but if he wilfully and obstinately refuses to answer, or answers in an evasive manner, he is then clearly guilty of a high and repeated contempt, to be punished at the discretion of the court (*r*).]

(*k*) Styl. 277.

(*l*) Anony., Salk. 84; R. *v.* Jones, Stra. 185; R. *v.* Cambridge, ib. 564.

(*m*) See The Queen *v.* Hemsworth, 3 C. B. 749.

(*n*) Saunders *v.* Melhuish, 6 Mod. 73.

(*o*) R. *v.* Barber, Stra. 444.

(*p*) Saunders *v.* Melhuish, ubi sup.

(*q*) See The Queen *v.* Hemsworth, ubi sup. A peer or lord of parliament is not exempted from process of attachment; at least if the contempt be gross—as by refusing to pay obedience to a writ of *habeas* to him directed. (R. *v.* Earl Ferrers, 1 Burr. 631; Lords' Journal, 7th Feb., 8th June, 1757.) As to the form of the warrant of commitment, see In re Fernandes, 6 H. & N. per cur. 726.

(*r*) R. *v.* Elkins, 4 Burr. 2129.

CHAPTER XVI.

OF ARRESTS FOR FELONY OR MISDEMEANOR.

WE are now to consider the regular and ordinary method of proceeding in the courts of criminal jurisdiction; viz. that which is (as the general rule) pursued where the offence charged amounts to a felony or indictable misdemeanor (*a*). This subject may be distributed under eleven general heads, following each other in progressive order, viz.

1. Arrest. 2. Commitment and bail. 3. Prosecution. 4. Process. 5. Arraignment, and its incidents. 6. Plea, and issue. 7. Trial, and conviction. 8. Judgment, and its consequences. 9. Reversal of judgment. 10. Reprieve, or pardon. 11. Execution. All which will be discussed in the subsequent part of this book.

An *arrest*, in the sense here referred to, is the apprehending or restraining of the person of a man, in order that he shall be forthcoming to answer an alleged or suspected crime. To this species of arrest all persons whatsoever are, without distinction, equally liable in criminal cases; and it may be either *by* warrant or *without*, according to the following distinctions:—

First. A *warrant* may be granted, in cases of treason or other offence affecting the government, by the privy council or one of the secretaries of state (*b*): and a judge

(*a*) It has been elsewhere explained that some misdemeanors, and even the *felonious* offence of larceny, may, in certain cases, be dealt with, not by way of indictment, but by a summary method of proceeding before a justice or justices. (Vide sup. pp. 332, 333.)

(*b*) 1 Chit. Cr. L. 34, 107; Hawk. P. C. b. 2, c. 16; 4 Bl. Com. 290; see Kendal *v.* Row, 1 Ld. Raym. 65; R. *v.* Wilkes, 2 Wils. 151; R. *v.*

of the Queen's Bench may also issue his warrant to bring before him for examination any person charged with felony (*c*). Moreover, such judge has authority, under 48 Geo. III. c. 58 (*d*), to grant a warrant against a person charged with any offence, which may be prosecuted by indictment or information in the Queen's Bench (on being satisfied that an indictment has been found or information filed), in order that he may be held to bail or committed for trial. A like power to which is exercised by courts of oyer and terminer and by the justices at sessions, upon indictments either for felony or misdemeanor found within their jurisdictions respectively (*e*).

But warrants are ordinarily issued by justices of the peace out of sessions; a subject on which the law has been lately consolidated by 11 & 12 Vict. c. 42 (*f*).

This statute provides in substance, that in all cases where a charge, or complaint, shall be made before one

Despard, 7 T. R. 736; 11 Harg. St. Tr. 318. See also Sedley *v.* Arbouin, 3 Esp. 178, as to the power of a secretary of state to remove a prisoner by warrant from Ireland, in order to his trial in England. It may be here noticed that a practice had obtained in the secretary of state's office ever since the Restoration, grounded on some clauses in the Acts for regulating the press, of issuing *general* warrants to take up, (without naming any persons in particular,) the authors, printers and publishers of such obscene or seditious libels as were particularly specified in the warrants. Although those Acts expired in 1694, the same practice was inadvertently continued till a case arose in the year 1763, wherein on such a warrant being issued to apprehend the authors, printers and publishers of a certain seditious libel, its validity was disputed, and the warrant was adjudged by the Queen's Bench to be void. (Money *v.* Leach, 3 Burr. 1742; S. C. 1 Bl. Rep. 555.) After this case the issuing of such general warrants was expressly declared to be illegal, by a vote of the house of commons. (Com. Journ. 22nd April, 1766.)

(*c*) 1 Chit. Cr. L. 36.

(*d*) This Act is in extension of previous enactments of 26 Geo. 3, c. 77, s. 18, and 35 Geo. 3, c. 46, which provided only for revenue prosecutions.

(*e*) 1 Ch. Cr. L. 339.

(*f*) The statute 11 & 12 Vict. c. 42, is not to alter or affect any of the provisions in the Metropolitan Police Acts, or in the *London* Police Act (as to which vide sup. p. 335 *in notis*).

or more justices of the peace,—alleging that any person has committed, or is suspected to have committed, any treason or other felony, or any indictable misdemeanor or offence whatsoever, within the limits of their jurisdiction; or that any person who has committed, or is suspected to have committed, such offence out of their jurisdiction (*h*), resides or is, or is suspected to reside or be, within the same:—then, (if the party shall not be already in custody,) such justice or justices may issue a warrant for his apprehension; and may cause him to be brought before them, or some other justice or justices of the same county or place, to answer the charge or complaint, and to be dealt with according to law; or they may, at their discretion, issue a summons, in the first instance,—in lieu of a warrant,—and forbear to proceed by warrant until the summons has been disobeyed. But there is this distinction; that where a warrant in the first instance is applied for, it must be grounded on an *information* or *complaint* in writing, and upon oath; but where only a summons, the information or complaint may be by parol, and no oath is necessary. The form of the warrant is prescribed by the statute itself; and a warrant properly penned, even though the magistrate who issues it should exceed his jurisdiction, will by statute 24 Geo. II. c. 44, at all events indemnify the officer who executes the same ministerially (*i*). On the other hand, when a warrant is received by the officer, he is bound to execute it so far as the jurisdiction of the magistrate and himself extends (*k*); and he may break open doors, in order to execute it, in case of treason, felony, or actual breach of the peace,—provided, on demand, admittance cannot

(*h*) 11 & 12 Vict. c. 42, s. 1. By sect. 2 this extends to offences committed within the jurisdiction of the Admiralty, or on land beyond the seas;—provided the case be one for which an indictment may legally be preferred in England or Wales.

(*i*) 4 Bl. Com. p. 291.

(*k*) Bl. Com. ubi sup.

otherwise be obtained (*l*). Nor is there any immunity from arrest in cases of that description, even in the night time; nor from arrest for any indictable offence whatever, on Sundays (*m*). A justice of the peace may also issue a warrant, not only to apprehend a person suspected of felony, but to search his premises for goods alleged to be stolen; and by 24 & 25 Vict. c. 96, s. 103, if any credible witness shall, upon oath, prove before him a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, in respect to which any offence punishable under that Act shall have been committed,—the justice may grant a warrant to search for such property, as in the case of stolen goods: and any person to whom any such property shall be offered to be sold, pawned, or delivered, is required, (if in his power,) to apprehend and carry before a justice of the peace the person offering the same, together with such property (*n*).

[A warrant from the chief or other justice of the Queen's Bench extends all over the kingdom; and is *tested*, (or dated,) *England;* not *Oxfordshire, Berks* or other particular county. But the warrant of a justice of the peace in one county, as Yorkshire, must be *backed*, that is, indorsed by a justice of the peace in another, as Middlesex, before it can be executed there.] Formerly, regularly speaking, there ought to have been a fresh warrant in every fresh county, but the practice of backing warrants had long prevailed without law, and was at last authorized by statutes; of which the most recent are the 11 & 12 Vict. c. 42, and the 14 & 15 Vict. c. 55, s. 18. By these statutes a warrant issued in England

(*l*) 1 Chit. Cr. L. 49; Rawlins *v.* Ellis, 16 Mee. & W. 172.

(*m*) 29 Car. 2, c. 7, s. 6, and see 11 & 12 Vict. c. 42, s. 4.

(*n*) Re-enacting 7 & 8 Geo. 4, c. 29, s. 63, which was repealed by 24 & 25 Vict. c. 95. Some particular provisions for the search of property suspected to have been illegally pawned will be found in the 35 & 36 Vict. c. 93, as to which vide sup. vol. II. p. 81.

or Wales may be backed, not only in another English county or place, but in Scotland, Ireland, or the Channel Islands, or *vice versâ* (*o*).

Secondly. [Arrest by officers *without warrant*, may be executed, 1. By a justice of the peace, who may himself apprehend, or cause to be apprehended, by word only, any person committing a felony or breach of the peace in his presence (*p*); 2. The sheriff; and, 3. The coroner, who may apprehend any felon within the county, without warrant (*q*); 4. The constable, of whose office we formerly spoke, and who hath great original and inherent authority with regard to arrests (*r*). He may, without warrant, arrest any one for a treason, felony, or breach of the peace committed in his view, and carry him before a justice of the peace.] So upon a reasonable charge of treason, or felony,—or of a dangerous wounding, whereby felony is likely to ensue,—or, upon his own reasonable suspicion that any of such offences have been committed, the con-

(*o*) And see 11 & 12 Vict. c. 43, s. 3, as to backing warrants in cases of *summary conviction*. We may also notice here other enactments of a character somewhat analogous. By 6 & 7 Vict. c. 34, (amended by 16 & 17 Vict. c. 118,) provisions are made as to the apprehension, in the united kingdom, of persons committing treason and felony in any of her majesty's dominions *out* of the united kingdom. And *vice versâ*, as to the apprehension, in those dominions, of persons so offending in the united kingdom. Moreover, by 33 & 34 Vict. c. 52, the "Extradition Act, 1870," and 36 & 37 Vict. c. 60, the "Extradition Act, 1873," (Acts passed in order to facilitate the delivering up of criminals taking refuge in England, to the state of which they are the subjects,) it is enacted, that where any foreign state has entered into an arrangement with her majesty with respect to the surrender to such state of fugitive criminals, the enactments of the Extradition Acts shall be made to apply to such state by order in council. But no fugitive criminals shall be surrendered for offences of a *political character*. Arrangements for mutual surrender of fugitive criminals at present exist with Austria, Denmark, France, Italy, and the United States. Some earlier statutes on extradition (viz., 6 & 7 Vict. cc. 75, 76; 8 & 9 Vict. c. 120; 25 & 26 Vict. c. 70; and 29 & 30 Vict. c. 121) are now repealed.

(*p*) 1 Hale, P. C. 86.

(*q*) Jervis on Coroners, 21.

(*r*) Vide sup. vol. II. p. 652, 653.

stable may, without warrant, arrest the party so charged or suspected; and he will be justified in doing so though it should afterwards turn out that the party is innocent, or even that no such offence has been in fact committed (*s*), He is also authorized in these cases, as well as upon a justice's warrant, to break open doors. Moreover, under the provisions of 24 & 25 Vict. cc. 97, 100, (relating respectively to malicious injuries to property and to offences against the person,) a constable may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard or other place during the night, and whom he shall have good cause to suspect of having committed, *or of being about to commit*, any felony mentioned in either of those Acts; and he must take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law (*t*). So by 27 & 28 Vict. c. 47, s. 6, he may so arrest and deal with any person who having been sentenced to penal servitude holds a licence to be at large, and is reasonably suspected by him to have committed any offence or broken any of the conditions of such licence. So, also, by the Prevention of Crime Act, 1871 (34 & 35 Vict. c. 112,) he is enabled thus to arrest (if authorized by the chief police officer of his district) any person whom he has reasonable grounds for believing to be getting his livelihood by dishonest means, or (even without such special

(*s*) See Hogg *v.* Ward, 3 H. & N. 417; Griffin *v.* Coleman, 4 H. & N. 265. See also Galliard *v.* Laxton, 2 B. & Smith, 363.

(*t*) Moreover, within the *metropolitan police district*, a constable may take into custody without warrant, any person whom he may find, between sunset and the hour of eight in the morning, loitering or lying about and unable to give a satisfactory account of himself,—or any person charged with aggravated assaults,—or any person whose address cannot be ascertained, whom he shall find offending against the metropolitan police Acts. (See 10 Geo. 4, c. 44; 2 & 3 Vict. c. 47, ss. 36, 64, 65; 17 & 18 Vict. c. 33, s. 1.) The metropolitan police district embraces the whole county of Middlesex, and all other parishes or places within fifteen miles of Charing-cross,—with the exception of the City of London, which maintains a separate police establishment.

authority) who is found in any place, public or private, under circumstances that show that he was about to commit or was waiting for an opportunity to commit some offence; or who is found in any house or in such other situations as are specified in the above Act, without being able to account satisfactorily for his being so found (*u*).

Again, any *private* person (and *à fortiori* a peace officer), *who is present when any felony is committed*, is bound by the law (without warrant) to arrest the felon, on pain of fine and imprisonment, if he negligently permit him to escape (*v*). And any person may also, by 14 & 15 Vict. c. 19, s. 11, apprehend one whom he finds committing *any* indictable offence, by *night* (*x*): or committing any of the larcenies and similar offences punishable under the 24 & 25 Vict. c. 96 (either upon indictment or summary conviction), except only the offence of angling in the day time; and he may carry such offender and the property (if any) found on him to a neighbouring justice, by him to be dealt with according to law. Again, by 24 & 25 Vict. c. 97, s. 61, any person found committing any malicious injury or other offence against that Act may be immediately apprehended, and carried to a justice, without warrant, either by a peace officer, or by the owner of the property injured, or his servant, or other person authorized by the owner (*y*). And, by 24 & 25 Vict. c. 99, s. 31, any person may apprehend any one whom he shall find committing any offence relating to the coin or other offence against that Act, and deliver him up to some peace officer. Moreover, at common law, any person

(*u*) 34 & 35 Vict. c. 112, s. 7. The constable, however, must satisfy the court of summary jurisdiction before whom he brings his prisoner, that the circumstances were such as to justify the arrest without a warrant. *Ib.*

(*v*) Hawk. P. C. b. 2, c. 12.

(*x*) As to the expression "found committing," see Downing *v.* Capel, Law Rep., 2 C. P. 461.

(*y*) See also 34 & 35 Vict. c. 112, s. 7, giving a similar power under certain circumstances to the owner of the premises (or his servants) on which a person is found, not able to give a satisfactory account of himself.

(whether a peace officer or not) may, without warrant, in the case of any felony committed in his presence, justify breaking open doors in pursuit of the offender: and may also arrest any one for felony *on probable suspicion* (*z*). But there is this distinction between the case of the peace officer, and that of a private person; that the former is protected though it should turn out that no such crime as supposed had been in fact committed by any one (provided he can show that he had reasonable ground for suspecting the party arrested): but the latter acts more at his peril; and is not protected, unless he can prove an actual commission of the crime by *some one*, as well as a reasonable ground for suspecting the particular person (*a*). It is also to be observed, that a private person cannot, on mere suspicion, justify breaking open doors; which a constable may do, even without a warrant (*b*).

[Finally, there is yet another species of arrest without warrant, and that is upon a *hue* and *cry* raised upon a felony committed (*c*). A *hue* (from *huer*, to shout) and cry, *hutesium et clamor*, is the old common law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another (*d*). If in a hue and cry, the constable, or peace officer, concur in the pursuit, he has the same powers, protection and indemnification, as if acting under a warrant of a justice of the peace.] Indeed all those who join in following upon a hue and cry that has been raised,—and that whether a constable be present or not,—will be justified in their apprehension

(*z*) 2 Hale, P. C. 78.

(*a*) Fost. 318. See Adams *v.* Moore, 2 Selw. N. P. 865; Moore *v.* Raye, 4 Taunt. 34; Beckwith *v.* Philby, 6 B. & C. 635; Williams *v.* Croeswell, 2 C. & K. 422.

(*b*) 4 Bl. Com. 292. See Smith *v.* Shirley, 3 C. B. 142. As to homicide in resisting an arrest by a private person, see 2 Hale, P. C. 84; Foster, 272, 309, 318.

(*c*) As to hue and cry, see 2 Hale, P. C. 100, et seq.

(*d*) The statutes relating to hue and cry, 13 Edw. 1, st. 2, cc. 1 and 4; 27 Eliz. c. 13, and 8 Geo. 2, c. 16; are repealed by 7 & 8 Geo. 4, c. 27.

of the party pursued, even though it should ultimately turn out that he is innocent, or that no felony has been committed (*e*); and, where the party pursued has taken refuge in a house, may break open the door to secure him, if admittance be refused (*f*). But if a man wantonly or maliciously raises a hue and cry without cause, he is liable to fine and imprisonment (*e*); and is also liable to an action at the suit of the party injured.

In order to encourage the apprehension of offenders in certain cases, it is provided by 7 Geo. IV. c. 64, s. 28, —repealing previous enactments of a similar kind,—that when a person shall appear to a court of oyer and terminer, or gaol delivery, to have been active in or towards the apprehension of one charged with murder, or with a felonious and malicious shooting; or an attempt to discharge loaded fire-arms at another person; or with stabbing, cutting or poisoning; or with administering anything to procure the miscarriage of a woman; or with rape, burglary or felonious housebreaking; or robbery from the person; or arson; or horse, bullock, or sheep stealing; or with being accessory, before the fact, to any of the offences aforesaid; or with receiving any stolen property knowing the same to have been stolen,—the court is authorized to order the sheriff of the county to pay to such person such a sum of money as shall seem a reasonable and sufficient compensation for his, her, or their expenses, exertions and loss of time (*g*). But this power is to be

(*e*) Hawk. P. C. b. 2, c. 12, s. 16.

(*f*) 2 Hale, P. C. 102.

(*g*) And see 7 Geo. 4, c. 64, s. 30, as to compensation to the families of those who are *killed* in attempting to apprehend persons charged with such offences as are mentioned in the text; and 14 & 15 Vict. c. 55, s. 7, providing that nothing in that Act, as to the regulations under which the power of allowance is to be exercised, shall interfere with the power of the court to order payment to any person who shall have shown extraordinary courage, diligence, or exertion in the apprehension. See also 19 & 20 Vict. c. 16, s. 13, as to compensation in cases removed for trial to the Central Criminal Court, under the provisions of that Act.

exercised subject to such regulations, as to the rate of allowance, as shall be made from time to time by the secretary of state. And by 14 & 15 Vict. c. 55, s. 8, the above power of ordering compensation is extended, under certain limitations as to the amount, to any court of sessions of the peace,—in reference to such of the above-mentioned offences as they have jurisdiction to try (*h*).

(*h*) The amount is limited to 5*l*. to any one person. As to the jurisdiction of the sessions, vide sup. p. 317.

CHAPTER XVII.

OF COMMITMENT AND BAIL.

WHEN a delinquent is arrested by any of the means mentioned in the preceding chapter, he should be carried before a justice of the peace; and how he is then to be treated, is now to be shown under the head of *commitment* and *bail* (*a*).

The justice or justices before whom such prisoner is brought are bound immediately to examine the circumstances of the crime alleged (*b*); and to this end, the following provisions have been made by the statute 11 & 12 Vict. c. 42, and 30 & 31 Vict. c. 35; viz. that the magistrates shall take, in the presence of the accused (who shall be at liberty to put questions to any witness produced against him), the statement on oath or affirmation of those who know the facts of the case, and shall put the same into writing (*c*):—that the room in which such examinations (or *depositions* as they are called) are taken shall not be deemed an open court; and that it shall be lawful for the justice or justices, if it appear to them most conducive to the ends of justice, to order that no person shall have

(*a*) Vide sup. p. 344. He ought to be brought before the justice without delay. (Wright *v.* Court, 6 D. & R. 623.)

(*b*) It may be remarked here that the regulations of the statutes as to how an accused person is to be examined apply, whether he appears voluntarily (on summons or otherwise) or has been brought up on warrant.

(*c*) 11 & 12 Vict. c. 42, s. 17. Such a deposition, or any statement (on oath or affirmation) made before and signed by a justice, under the provisions of 30 & 31 Vict. c. 35, s. 6, by any person *dangerously ill and not likely to recover*, may be afterwards used at the trial of the accused in the event of the deponent being then dead, or unable to travel or give evidence.

access to the same (*d*):—and that after the examinations of all the witnesses on the part of the prosecution have been taken, and by them respectively signed, as well as by the examining magistrate, they shall be read over to the accused, who shall be asked if he wishes to say anything in answer to the charge, but at the same time cautioned that he has nothing to hope from any promise, or to fear from any threat, that may have been held out to him; and that (notwithstanding any such promise or threat), anything he may then say, may be read in evidence against him upon his trial. The statutes proceed to direct that whatever the accused person shall, after the above caution, say in answer to the charge shall be taken down in writing, and read over to him, and signed by the magistrate (*e*). The accused is then forthwith to be asked whether he desires to call witnesses, and in that case such justice or justices shall, in his presence, take the statement on oath or affirmation, both by way of examination and cross-examination, of those who shall be so called by him, and who shall know anything relating to the facts and circumstances of the case, or anything tending to prove his innocence, and shall put the same into writing (*f*). It is further provided:—that if, when all the evidence against the accused person shall have been heard, the justice or justices shall be of opinion that it is not sufficient to put him upon his trial, they shall forthwith order him to be discharged; but that if they shall be of the opposite opinion, or if the evidence given raise a strong or probable presumption of his guilt, they shall either commit him to prison to take his trial (as hereafter mentioned), or admit him to bail,—that is, allow him

(*d*) 11 & 12 Vict. c. 42. s. 19.

(*e*) Sect. 18. As to this provision, see Reg. *v.* Stripp, 1 Dearsley's C. C. R. 648.

(*f*) 30 & 31 Vict. c. 35, s. 3. As to the expenses of such witnesses, see sect. 5. It is not the practice to examine the prisoner himself, otherwise than by thus calling on him for his defence; and this corresponds with the canon law, whereby, says Blackstone, (vol. iv. p. 296,) "*nemo tenetur prodere seipsum.*"

to be discharged, on entering into a recognizance (with some sufficient surety or sureties), to appear and surrender himself to custody, and take his trial on such indictment as may be found against him, in respect of the charge in question, at the next assizes or sessions of the peace. If the charge cannot be properly investigated at a single hearing, it is the practice of the examining magistrate to *remand* the person accused from time to time, to be kept in safe custody and under proper restraint until he can either be discharged or committed. It is, however, in the discretion of the court to allow the person accused to remain at large during the period of the investigation.

The justices, however, have no power to admit any person to bail for *treason;* nor shall bail, in that case, be allowed except by order of a secretary of state, or by the Queen's Bench, or a judge thereof in vacation: while, on the other hand, they are bound to admit to bail in all cases of misdemeanor, except such as the Act of 11 & 12 Vict. c. 42, particularly enumerates; and as to all felonies (treason excepted), as well as to the misdemeanors so enumerated, they have a discretionary power either to admit to bail (*g*), or to commit to prison (*h*).

[To refuse or delay to bail any person bailable, is an offence against the liberty of the subject, in any magistrate, by the common law (*i*), as well as by the statute

(*g*) Formerly there were many other cases besides treason in which justices of the peace had no power to bail; for example, that of murder and of arson. (See 4 Bl. Com. 299.)

(*h*) The misdemeanors enumerated in 11 & 12 Vict. c. 42, for which justices are *not* obliged to take bail, are as follows—assault with intent to commit felony; obtaining or attempting to obtain property by false pretences; receiving property stolen or obtained by false pretences; perjury or subornation of perjury; concealing the birth of a child by secret burying or otherwise; wilful and indecent exposure of the person; riot; assault in pursuance of a conspiracy to raise wages; assault upon a police officer in the execution of his duty, or upon any person acting in his aid; neglect or breach of duty as a peace officer; and any misdemeanor, for prosecution of which costs may be allowed out of the county rate. (Sect. 23.)

(*i*) Hawk. P. C. b. 2, c. 15, s. 13, See Queen *v.* Badger, 4 Q. B. 468; Linford *v.* Fitzroy, 13 Q. B. 240.

[of Westminster the first, 3 Edw. I. c. 15, and the *Habeas Corpus* Act, 31 Car. II. c. 2 (*k*). And lest the intention of the law should be frustrated, by the justices requiring bail to a greater amount than the nature of the case demands, it is expressly declared by 1 W. & M. st. 2, c. 1, that excessive bail ought not to be required; though what bail shall be called excessive must be left to the courts, on considering the circumstances of the case, to determine. And on the other hand, if the magistrate take insufficient bail, he is liable to be fined if the criminal doth not appear (*l*).]

Such, as the law now stands, is the power of the justices of the peace in bailing prisoners brought before them (*m*). It is to be understood, however, that in this matter the Queen's Bench (or a judge thereof) exercises a paramount jurisdiction;—having authority to bail, not only in cases where the charge is originally before them, but also in cases where it is brought before justices of the peace, and bail is there refused. [Nor is there any limit whatever to the power of the Queen's Bench in this particular (*n*): which may bail for any crime whatsoever, be it treason (*o*), murder (*p*) or any other offence according to

(*k*) See also 56 Geo. 3, c. 100.

(*l*) Hawk. P. C. b. 2, c. 15, s. 6; and see 7 Geo. 4, c. 64, ss. 5, 6; R. *v.* Saunders, 2 Cox's Cr. C. 249.

(*m*) The court before which a prisoner is brought to plead, has also power to bail him. (4 Bl. Com. 297.) As to the power of bailing in the *metropolitan police courts*, see 2 & 3 Vict. c. 71, s. 36; and in the case of *juvenile offenders* charged with simple larceny, see 10 & 11 Vict. c. 82, s. 5. See also 18 & 19 Vict. c. 126, ss. 5, 6, as to bailing persons charged with larceny, &c., under that Act, and 22 Vict. c. 33, enabling *coroners* to admit to bail persons charged with manslaughter, by the verdict of a coroner's jury.

(*n*) 2 Inst. 189; Latch. 12; Vang. 157; Comb. 111, 298; 1 Com. Dig. 493.

(*o*) In the reign of Queen Elizabeth, however, it was the unanimous opinion of the judges, that no court could bail a person committed, on a charge of high treason, by any of the queen's privy council. (1 Anders. 298.)

(*p*) Antiently felonious homicide seems to have been an exception. "*In omnibus placitis de feloniâ solet accusatus per plegios dimitti, præterquam in placito de homicidio.*" (Glan. l. 14, c. 1.) "*Sciendum tamen quod, in hoc placito,*

[the circumstances of the case.] It is not usual, however, either for the Queen's Bench, or for magistrates, to admit to bail in a case of felony, except under circumstances of a special and favourable kind (*q*).

Supposing no bail to be allowed, or none to be found by the accused, he is then to be committed to prison by warrant of the examining magistrate, to be there safely kept until delivered by due course of law (*r*). [But this imprisonment is only for safe custody, and not for punishment; and therefore, in this dubious interval between the commitment and trial, a prisoner ought to be treated with the utmost humanity; and neither be loaded with needless fetters, nor subjected to other hardships than such as are absolutely requisite for the purposes of confinement.] And it is accordingly expressly enacted by the 28 & 29 Vict. c. 126, s. 32, that criminal prisoners before trial shall have the option of employment, but shall not be compelled to perform any hard labour (*s*).

In either case, whether of bailing or commitment, the accused is entitled to demand, from the person having the custody of the same, copies of the examinations (or depositions) on which he shall have been bailed or committed, upon payment for them at a reasonable and prescribed rate (*t*). And the justice or justices are also empowered, in either case, to bind over by recognizance the prosecutor and witnesses to appear at the next assizes

non solet accusatus per plegios dimitti, nisi ex regiæ potestatis beneficio." (Glan. l. 14, c. 3.)

(*q*) See Barronet's case, 1 Dearsley's C. C. R. 51.

(*r*) 11 & 12 Vict. c. 42, s. 25. See 28 & 29 Vict. c. 126, s. 56.

(*s*) If the prisoner elect to be employed and shall be acquitted, or no indictment be found against him, a reasonable allowance may be made to him on account of such his earnings. (28 & 29 Vict. c. 126, s. 33.) It may be noticed that the prison rules for the treatment of prisoners before trial, as well as of accused persons under remand, and previously either to their discharge or commitment, are subject to the supervision and allowance of the secretary of state.

(*t*) 11 & 12 Vict. c. 42, s. 27; 30 & 31 Vict. c. 35, s. 4. See Queen *v.* Lord Mayor of London, 5 Q. B. 555; R. *v.* Davies and others, 1 L. M. & P. 323.

or sessions of the peace, at which the accused is to be tried, then and there to prosecute or to give evidence. And the several recognizances so taken, together with the written information (if any); the depositions; the statement of the accused; and the recognizance of bail (if any);—must be delivered to the proper officer at such assizes or sessions before or at the opening of the court, on the first day of its sitting (*u*).

(*u*) 11 & 12 Vict. c. 42, s. 20; 30 & 31 Vict. c. 35, s. 3. By 19 & 20 Vict. c. 16, where any person shall have been committed or held to bail for any felony or misdemeanor alleged to have been committed out of the jurisdiction of the Central Criminal Court, the Queen's Bench, (or any judge thereof in vacation,) may, if it shall appear expedient to the ends of justice, order the trial of such person to take place at the Central Criminal Court. In such case, the examining justice, coroner, or other officer in whose custody the indictment or inquisition against the person charged may be,—must forthwith transmit to the proper officer of the Central Criminal Court any recognizances, depositions, examinations or informations relating to the offence charged, to be kept among the records of the Central Criminal Court. And the gaoler or keeper of any gaol or house of correction, in which the person charged is confined, is, without writ of *habeas corpus* or other writ for that purpose, to cause such person to be removed to the prison of that court. (19 & 20 Vict. c. 16, s. 4.)

CHAPTER XVIII.

OF THE SEVERAL MODES OF PROSECUTION.

[THE next step towards the punishment of offenders is their prosecution, or the manner of their formal accusation (*a*): and this is either upon a previous finding of the fact by an inquest or grand jury, or without such previous finding. The former way, is either by *presentment* or by *indictment.*

I. A presentment, *generally* taken, is a very comprehensive term; and includes inquisitions of office, and indictments by a grand jury. But a presentment, *properly* speaking, is the notice taken by a grand jury, of any matter or offence from their own knowledge or observations, without any bill of indictment laid before them at the suit of the Crown (*b*):—as the presentment by them of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer it (*c*). An inquisition of office is the act of a jury summoned by the proper officer to inquire of matters relating to the Crown, upon evidence laid before them. Such inquisitions may be afterwards traversed and examined; as particularly the coroner's inquisition of the death of a man, when it finds any one guilty of homicide (*d*): for, in such cases, the offender so presented must be arraigned upon this inquisition, and may dispute the

(*a*) Vide sup. p. 344.
(*b*) Lamb. Eirenarch. l. 4, c. 5.
(*c*) 2 Inst. 739.
(*d*) See Jervis on Coroners, 282.

[truth of it: which brings it to a kind of indictment, the most usual and effectual means of prosecution, and into which we will therefore inquire a little more minutely.]

II. An *indictment* is a written accusation that one or more persons have committed a certain felony or misdemeanor,—such accusation being preferred to, and (being found true) presented to the court upon oath by, a grand jury (*f*). [To this end the sheriff of every county is directed by precept, issued for the purpose, to return to every session of the peace, and every commission of oyer and terminer, and of general gaol delivery, twenty-four good and loyal men of the county,—to inquire into, present, do, and execute all those things which, on the part of our lady the queen, shall then and there be commanded them (*g*).] At the sessions of the peace, their qualification is the same as required for jurors in the trial of civil causes. At the assize courts their qualification is not absolutely defined by law: [they ought, indeed, to be freeholders, but to what amount is uncertain (*h*). However, they are usually gentlemen of the best figure in the county (*i*). As many as appear upon this panel are sworn upon the grand jury, to the amount of twelve at the least, and not more than twenty-three, that twelve may be a majority (*k*). Which number, as well as the constitution itself, we find exactly described so early as the laws of King Ethelred (*l*):—"*Exeant seniores duodecim thani, et præfectus cum eis, et jurent super sanctuarium quod eis in manus datur, quod nolint ullum innocentem accusare nec aliquem noxium celare.*" In the time of King Richard the first (according to Hoveden),

(*f*) By 30 & 31 Vict. c. 35, s. 8, a juror unwilling from conscientious scruples to be sworn, on satisfying the court of the sincerity of such scruples, may make solemn affirmation instead of an oath.

(*g*) 2 Hale, P. C. 154.

(*h*) Ib. 155.

(*i*) See 1 Chit. Cr. L. p. 238.

(*k*) R. *v.* Marsh, 6 Ad. & El. 236.

(*l*) Wilk. LL. Angl. Sax. 117.

[the process of electing the grand jury, ordained by that prince, was as follows:—four knights were to be taken from the county at large, who chose two more out of every hundred; which two associated to themselves ten other principal freemen, and those twelve were to answer concerning all particulars relating to their own district.] This number was probably found too large and inconvenient; but the traces of the institution long remained: for until dispensed with by 6 Geo. IV. c. 50, s. 13, it was held to be necessary that some of the jury should be summoned out of every hundred (*m*). [This grand jury are previously instructed in the articles of their inquiry, by a charge from the judge who presides upon the bench. They then withdraw to sit and receive indictments, which are preferred to them in the name of the sovereign, but at the suit of some private prosecutor: and they are only to hear evidence on behalf of the prosecution (*n*): for the finding of an indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to inquire whether there be sufficient cause to call upon the party to answer it (*o*). A grand jury, however, ought to be thoroughly convinced of the truth of an indictment, so far as the

(*m*) 2 Hale, P. C. 154; 4 Bl. Com. 303.

(*n*) By 19 & 20 Vict. c. 54, the foreman of the grand jury is authorized to administer an oath, (or affirmation where such is allowed by law,) to all persons appearing before them to give evidence. Before this Act, such administration had to be in open court.

(*o*) Upon an indictment for high treason against the Earl of Shaftesbury, in the year 1681, the evidence was given *in public* before the grand jury at the Old Bailey; and the gentlemen of the jury expressing some doubts with regard to the legality of the proceeding, Lord C. J. Pemberton and C. J. North both declared that it had always been the practice to examine the witnesses publicly before the grand jury, whenever it had been requested by those who prosecuted for the king. (3 Harg. St. Tr. 417.) But it is apprehended this is the last instance of such a procedure. (Christian's Blackstone.) It seems that an improper mode of swearing the witnesses before a grand jury will not vitiate the indictment. (R. *v.* Russel, 1 Car. & M. 247.)

[evidence goes: and not to rest satisfied merely with remote probabilities: a doctrine that might be applied to very oppressive purposes (*p*).] By a recent enactment also, viz., 22 & 23 Vict. c. 17 (amended by 30 & 31 Vict. c. 45, s. 1), passed to prevent vexatious indictments, no bill of indictment shall be presented to the grand jury or found by them for offences of a certain description, unless there is either such recognizance given by the prosecutor as mentioned in the statute, or the person accused has been committed or bound over to appear to answer an indictment for the offence, or such consent or direction given for the prosecution as therein specified (*q*).

[The grand jury are sworn to inquire only for the body of the county, *pro corpore comitatûs*, but for no other part of the kingdom; and therefore they cannot regularly inquire of a fact done out of the county for which they are sworn, unless particularly enabled to do so by Act of Parliament. And to so high a nicety was this matter antiently carried, that where a man was wounded in one county and died in another, the offender was at common law indictable in neither, because no complete act of felony was done in any one of them:] but by statute 2 & 3 Edw. VI. c. 24, he was rendered indictable in the county where the party died; and by statute 7 Geo. IV. c. 64, (repealing that of Edward the sixth,) he is now made indictable in either county. Also by 24 & 25 Vict. c. 100, s. 10, if the felonious stroke,

(*p*) St. Tr. iv. 183.

(*q*) See Ex parte Wason, Law Rep., 4 Q. B. 573. The offences named in the 22 & 23 Vict. c. 17, are the following:—Perjury, subornation of perjury, conspiracy, obtaining property by false pretences, keeping a gambling-house, keeping a disorderly house, and any indecent assault. The consent or direction referred to in the text, may be given by any of the judges, the attorney or the solicitor-general, the court itself before whom the indictment shall be preferred, or (in a charge of perjury) any court or person authorized to direct a prosecution for that offence by 14 & 15 Vict. c. 100. (See The Queen *v.* Bray, 3 B. & Smith, 255.) By 30 & 31 Vict. c. 35, s. 2, a person indicted under the provisions of 22 & 23 Vict. c. 17, and acquitted at his trial, may, in some cases, be directed by the court to receive his reasonable costs and expenses from the prosecutor.

poisoning, or other hurt, be in England or Ireland, and the death on the sea (*r*), or out of England or Ireland, or *vice versâ*—the offenders and their accessories may be dealt with, tried, and punished, in the county or place where either the death, stroke, poisoning, or hurt shall happen (*s*). [And so in some other cases; as particularly where *treason* is committed out of the realm, it may be inquired of either in the Queen's Bench, in any county where that court sits; or, under a special commission of oyer and terminer, in any county within the realm, as the Crown shall direct, in pursuance of statutes 26 Hen. VIII. c. 13; 35 Hen. VIII. c. 2, and 5 & 6 Edw. VI. c. 11 (*t*).] So, under 42 Geo. III. c. 85, all offences committed by persons employed by the Crown in any station abroad, in the exercise or under colour of their office, may be prosecuted in the Queen's Bench in England (*u*). So, also, offences committed at sea, or within the Admiralty jurisdiction, may—under 4 & 5 Will. IV. c. 36, s. 22, and 7 & 8 Vict. c. 2 (*x*),—be inquired of and determined in any of the courts of assize, oyer and terminer, and gaol delivery (*y*). To which we may add that by 24 & 25 Vict. c. 94, s. 7, the offence of a person accessory to any felony, wholly committed within England or Ireland, may be

(*r*) As to the case of a murder or manslaughter of a British subject *on land* out of the united kingdom, see 24 & 25 Vict. c. 100, s. 9.

(*s*) This provision re-enacts 9 Geo. 4, c. 31, s. 8 (repealed by 24 & 25 Vict. c. 95). As to its construction, see Reg. *v.* Lewis, 1 Dears. & B. 182. By 23 & 24 Vict. c. 122, the *colonies* may make a similar enactment.

(*t*) 4 Bl. Com. p. 303. Another Act on the same subject, viz. 33 Hen. 8, c. 23, is repealed by 9 Geo. 4, c. 31.

(*u*) And see 11 & 12 Will. 3, c. 12; 8 East, 31; and the case of The Queen *v.* Eyre, Law Rep., 3 Q. B. 487.

(*x*) And see 17 & 18 Vict. c. 104. s. 267, by which offences committed by *British seamen*, out of her majesty's dominions, are to be deemed to have been committed within the Admiralty jurisdiction.

(*y*) Vide sup. p. 312. In certain cases, however, by 12 & 13 Vict. c. 96, offences committed within the Admiralty jurisdiction, may be tried in the courts of the colony, (including *India*, see 23 & 24 Vict. c. 88,) where the person is charged.

tried by any court having jurisdiction to try the principal felony, or to try any felonies committed in any county or place in which the act making such person accessory was committed; and that in every other case, an accessory may be tried by any court with jurisdiction to try his principal, or to try any felonies in the place where the accessory was apprehended,—wherever the principal felony was committed. Moreover any indictable offence, mentioned in any of the Acts passed in the year 1861 for the consolidation of the statute law relating to offences against the person, to larceny, to malicious injuries to property, to coinage offences, and to forgery, which shall be committed within the admiralty jurisdiction of England or Ireland, may be dealt with, inquired of, tried and determined in any county or place in which the offender shall be apprehended or be in custody (*z*). In addition to which, there are to be found in the statute book, a variety of other and more specific exceptions from the principle that an offender must be indicted and tried in the county in which the offence is committed,—which have been introduced, from time to time, to prevent the failure of justice, or to promote its convenient administration (*a*). We may also

(*z*) See 24 & 25 Vict. c. 100, s. 68; c. 96, s. 115; c. 97, s. 72; c. 99, s. 36; c. 98, s. 36.

(*a*) See as to the offences of *extortion*, 31 Eliz. c. 5, s. 4, (et 2 Chit. Cr. Law, 294, n.)—As to *robberies, &c. in Newfoundland*, 10 & 11 Will. 3, c. 25, s. 13.—As to *burning ships, &c. out of the realm*, 12 Geo. 3, c. 24, s. 2.—As to *misdemeanors in India*, 13 Geo. 3, c. 63.—As to *seducing soldiers, &c.*, 37 Geo. 3, c. 70, s. 2; 57 Geo. 3, c. 7.—As to *offences against stamp Acts*, 53 Geo. 3, c. 108, s. 24; 55 Geo. 3, c. 184, s. 8. As to *offences by pilots*, 1 & 2 Geo. 4, c. 75, s. 22.—As to *escapes, prison-breach, and rescue*, 4 Geo. 4, c. 64, s. 44.—As to *offences against the excise*, 7 & 8 Geo. 4, c. 53, s. 48.—As to *offences committed in coaches or vessels*, 7 Geo. 4, c. 64, s. 13. (See Sharpe's case, 1 Dearsley's C. C. R. 415.)—As to *offences against the Post Office*, 7 Will. 4 & 1 Vict. c. 36, s. 37.—As to *offences against the customs*, 16 & 17 Vict. c. 107, s. 304—As to *offences committed on British ships*, 18 & 19 Vict. c. 91, s. 21. (See The Queen *v.* Lopez, 27 L. J. (M. C.) 48, and 30 & 31 Vict. c. 124, s. 11.)—As to *Foreign Enlistment Act*, 33 & 34 Vict. c. 90, s. 16.

notice the following more general provisions. By 38 Geo. III. c. 52, where an offence has been committed within a county corporate (*b*), the indictment may be preferred to the jury of the next adjoining county (*c*). By 7 Geo. IV. c. 64, s. 12, where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one county and completed in another,—every such felony or misdemeanor may be dealt with and tried in any of the counties (*d*). And by 4 & 5 Will. IV. c. 36, s. 3, it is provided as to all offences committed within the jurisdiction of the "Central Criminal Court" (*e*), that the whole metropolitan district over which it extends shall be considered, for the purpose of indictment, as one county (*f*). Besides all which, it is to be remarked in reference to this subject, that, independently of legislative provision, it is in the nature of some offences to admit, at the common law, of inquiry and trial in more counties than one. Thus in treason committed within the realm, the indictment may be in any county in which any one overt act can be proved (*g*); and in conspiracy, in any county in which any act may have been committed in furtherance of the common design (*h*). So if a man commit a simple larceny

(*b*) Vide sup. vol. I. p. 183. This enactment does not extend to London, Westminster or Southwark. (See 38 Geo. 3, c. 52, s. 10; 5 & 6 Will. 4, c. 76, s. 109.)

(*c*) As to the indictment in such cases, see 14 & 15 Vict. c. 100, s. 23.

(*d*) As to this provision, see R. *v.* Mitchell, 2 Gale & D. 274.

(*e*) As to this court, vide sup. p. 403.

(*f*) The jurisdiction of this court also comprises offences committed at sea (vide sup. p. 312.) It may be observed here, that persons convicted in this court on an indictment or inquisition removed thither under 19 & 20 Vict. c. 16, may, (by sect. 19 of that Act,) be sentenced and punished either in the county where the offence was committed, or at any place within the jurisdiction of the Central Criminal Court.

(*g*) Deacon's case, Foster, 10.

(*h*) R. *v.* Brisac and Scott, 4 East, 164.

in one county, and carry the goods with him into another, he may be indicted in either: for the law considers this as a taking in both (*i*).

[When the grand jury have heard the evidence, if they think it a groundless accusation, they used formerly to indorse on the back of the bill "*ignoramus*," or we know nothing of it: intimating that though the facts might possibly be true, that truth did not appear to them; but now they assert in English more absolutely, "not a true bill," or (which is the better way) "not found," and then the bill is said to be "thrown out," and the party is discharged without further answer (*k*). But a fresh bill may afterwards be preferred to a *subsequent* grand jury (*l*). On the other hand, if they are satisfied of the truth of the accusation, they indorse upon it, "a true bill;" antiently "*billa vera*." The indictment is then said to be *found;* and the party stands indicted. But to find a bill, there must at least twelve of the jury agree: for so tender is the law of England of the lives and liberties of the subjects, that no man can be convicted at the suit of the Crown upon an indictment, unless by the unanimous voice of twenty-four of his equals and neighbours; that is, by twelve at least of the grand jury, in the first place, assenting to the

(*i*) 1 Hale, P. C. 507; 2 Hale, P. C. 163; 4 Bl. Com. 305. Also by the Larceny Act, 1861 (24 & 25 Vict. c. 96, s. 114), if property be stolen or otherwise feloniously taken in one part of the united kingdom, and the offender afterwards have it in his possession in any *other* part of the united kingdom,—he may be dealt with for larceny or theft in that part where he shall so have such property, as if he had actually stolen or feloniously taken it there. And a receiver of stolen property may be dealt with in that part of the united kingdom where he shall receive the property, as if it had been originally stolen there.

(*k*) If the bill be thrown out by the grand jury, the party must be discharged without the payment of any fees. (8 & 9 Vict. c. 114.)

(*l*) But if the grand jury at the assizes or sessions have thrown out a bill, they cannot find another bill against the same person for the same offence, at the *same* assizes or sessions. (R. *v.* Humphreys, 1 Car. & Mar. 601.)

[accusation; and afterwards by the whole petty jury, of twelve more, finding him guilty upon his trial. But if twelve of the grand jury assent, it is a good presentment, though some of the rest disagree (*n*). And the indictment when so found (or not found, as the case may be) is then returned, or publicly delivered into court: and the finding of the jury openly proclaimed.]

Indictments must have a precise and sufficient certainty; and, in their margin, they always mention the county in which the offence was committed: which is done by way of *venue*, that is, by way of indicating from what county the jurors came, by whom the indictment was found. In the body also of this instrument there was formerly always inserted,—by way of more particular venue, and to indicate the place from whence the petty jury, who are afterwards to try the fact, would, according to the antient usage, have been summoned (*o*),—an allegation of the town, hamlet, or parish, in which the fact is supposed to be committed, as well as the day of its commission (*p*). But by 14 & 15 Vict. c. 100, s. 23, it is made unnecessary to state any *venue* in the body of the indictment; but the county in the margin shall be taken to be the venue for all the facts; except where it is requisite to state a place by way of local description, and not merely as venue; in which case the place shall still be stated in the body of the indictment. So, by the same statute (sect. 24) an omission in the indictment to state the *time*, or any imperfect statement of it,—where time is not of the essence of the offence,—shall not constitute any

(*n*) 2 Hale, P. C. 161.

(*o*) At common law, the petty jury, who were to try the fact in issue, were summoned from the particular place where the fact in issue occurred. (See Hawk. P. C. b. 2, c. 23, s. 92.) But this principle is now obsolete with regard to both civil and criminal proceedings. And by 6 Geo. 4, c. 50, s. 13, they are now to be summoned from the body of the county; and not even from any particular hundred within the same.

(*p*) See R. *v.* Brookes, 1 Car. & M. 543.

objection (*q*). But cases occasionally occur in which time *is* of the essence of the offence, for example, where there is any limitation in point of time assigned for the prosecution of offenders. [As by the statute 7 Will. III. c. 3, which enacts, that no prosecution shall be had for any of the treasons or misprisions therein mentioned, (except an assassination, designed or attempted, on the person of the sovereign), unless the bill of indictment be found within three years after the offence committed (*r*); and, in case of murder, the time of the death must be laid within a year and a day after the mortal stroke was given.

In other respects, also, indictments must have a precise and sufficient certainty. By statute 1 Hen. V. c. 5, all indictments should set forth the christian name, surname, and addition of the state and degree, mystery, town, or place, and the county of the offender; and all this to identify his *person* (*s*): but if his name be unknown, and he refuse to disclose it, an indictment against him as a person whose name is to the jurors unknown, but who is personally brought before them by the keeper of the prison, is, notwithstanding the above enactment, sufficient (*t*).] And now by 14 & 15 Vict. c. 100, s. 24, no want of, or imperfection in, the addition of the defendant shall vitiate the indictment; nor the designation of any person by a name of office or other descriptive appellation, instead of by his proper name. [The offence itself must also be set forth with clearness and certainty (*u*); and in some crimes particular words of art must be used, which are so appropriated by the law to express the precise idea which it entertains of the offence, that no other words, however synonymous they may seem, are capable of doing it. Thus

(*q*) The law seems to have been nearly the same, even before this statute. (4 Bl. Com. 306.)

(*r*) Foster, 249.

(*s*) In case of an indictment against a corporation, its name of incorporation may be used. (2 Gale & D. 236.)

(*t*) Anon., R. & R. C. C. R. 489.

(*u*) See Reg. *v.* Rowed, 3 Q. B. 180.

[in treason, the facts must be laid to be done "treasonably and against his allegiance;" antiently, "*proditorie et contra ligeantiæ suæ debitum;*" else the indictment is void. In indictments for murder, it is necessary to say, that the party indicted "murdered," not "killed" or "slew," the other; which, till the statute 4 Geo. II. c. 26, directing all proceedings in courts, concerning the law and administration of justice, to be in English, was expressed in Latin by the word "*murdravit.*" In all indictments for felonies, the adverb "feloniously" must be used; and for burglaries, also "burglariously;" and all these to ascertain the intent. In rapes, the word "ravished" is necessary, and must not be expressed by any periphrasis; in order to render the crime certain. So in larcenies, also, the words "feloniously took and carried away" are necessary to every indictment; for these only can express the very offence(*x*). In addition to which we may remark, that where the offence is created by an Act of Parliament, the words of the statute, which describe the offence, should be exactly pursued(*y*).]

The precision indeed of our pleadings, (whether in criminal or civil cases,) has ever been remarkable; and up to a recent period was carried to an extravagant length, tending to an excessive subtlety, and overstrained observance of form, very prejudicial to the interests of justice. This blemish on our jurisprudence, (the result, it must be observed, of an overweening attachment to a right principle,) it has been the constant effort of modern legislation to efface; though the steps of that improvement have been cautious and progressive. Such of these as chiefly refer to the manner in which the various offences of which we have spoken may now respectively be charged in the framing of an indictment, it would be inconvenient to recount in detail in a treatise such as the present(*z*).

(*x*) See R. *v.* Crighton, R. & R. C. C. R. 62.

(*y*) See R. *v.* Jukes, 8 T. R. 536.

(*z*) As to the form of indictment for *murder or manslaughter*, see 24 & 25 Vict. c. 100, s. 6; for *cutting*,

But some provisions of a more general nature shall here be briefly noticed.

And, first, by 9 Geo. IV. c. 15, and 11 & 12 Vict. c. 46, s. 4, judges at nisi prius or at any court of oyer and terminer and gaol delivery, are empowered, at their discretion, to cause an indictment or information for any offence whatever, to be forthwith amended by an officer of the court, when any *variance*, shall appear between some matter in writing or in print produced in evidence, and the recital or setting forth thereof in the indictment or information whereon the trial is pending.

Again, by 14 & 15 Vict. c. 100, s. 1 (*a*), whenever on the trial of an indictment, there shall appear to be a variance between the statement therein and the evidence offered as to the name of any county, riding, division, city, borough, town corporate, parish, township or other place: or in the name or description of any person therein alleged to be the owner of property (real or personal) forming the subject of the offence charged, or alleged in the indictment to be injured or damaged, or intended to be injured or damaged, by such offence; or in the name or description of any person, matter or thing therein named or described; or in the ownership of any property named or described therein:—it shall be lawful for the court before which the trial shall be had, in any of the

stabbing or wounding, 14 & 15 Vict. c. 19, s. 5; for *larceny*, 24 & 25 Vict. c. 96, ss. 5, 6, 92; for *robbery*, 24 & 25 Vict. c. 96, s. 41; for *embezzlement* and *obtaining money under false pretences*, 12 & 13 Vict. c. 103, s. 15; 14 & 15 Vict. c. 100, s. 18; 24 & 25 Vict. c. 96, ss. 72, 88; for *offences against the Post-office*, 11 & 12 Vict. c. 88, s. 5; for *receiving stolen property*, 24 & 25 Vict. c. 96, s. 94; for *forgery*, 24 & 25 Vict. c. 98, s. 44; for *treason felony*, 11 & 12 Vict. c. 12, s. 5; for *coining*, 24 & 25 Vict. c. 99, s. 37; for *perjury*, 14 & 15 Vict. c. 100, ss. 20, 21.

(*a*) As to the construction of this Act, see Sill's case, 1 Dearsley's C. C. R. 132; Frost's case, ib. 474; The Queen *v.* Green, 26 L. J., M. C. 17. It may be here observed, that the statute includes under the word *indictment*,—an *information*, *inquisition*, *presentment*; any *plea*, *replication*, and other *pleading*; and also any *nisi prius record*. (14 & 15 Vict. c. 100. s. 36).

above cases, if it shall consider such variance *not material to the merits of the case*, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order the indictment to be amended, according to the proof, by an officer of the court or some other person;—on such terms as to postponing the trial, to be had before the same or another jury, as the court shall think reasonable.

And by 14 & 15 Vict. c. 100, ss. 5, 7, and 24 & 25 Vict. c. 98, ss. 42, 43, whenever it becomes necessary, in any indictment, to make averment as to an instrument which shall consist wholly or in part of writing, print or figures; —it shall be sufficient to describe such instrument by any name, description or designation, by which it is usually known, (or by the purport thereof,) without setting forth any copy or fac-simile.

Moreover, by 14 & 15 Vict. c. 100, s. 9, if on the trial of one accused of a felony or misdemeanor, it shall appear to the jury that he did not complete the offence charged, but was guilty only of an attempt to commit the same, the jury may find accordingly, and he shall be punished in the same manner as if he had been indicted for the attempt only.

By the same statute (sect. 12), if upon the trial of a person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, he shall not by reason thereof be entitled to be acquitted of the misdemeanor; but he shall not be liable to be afterwards prosecuted for the felony, unless the court shall think fit to discharge the jury from giving any verdict, and shall direct an indictment for the felony; in which case he shall be dealt with in all respects as if he had not been put on his trial for the misdemeanor.

And, finally, by sect. 24, no indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record;" or the words "with force and arms;" or the words "against the peace;"

nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes," or *vice versâ;* nor for that any person is designated by a name of office or other descriptive appellation, instead of his proper name; nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence; nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment; or on an impossible day, or on a day that never happened; nor for want of a proper or perfect venue; nor for want of a proper or formal conclusion; nor for want of or imperfection in the addition of any defendant; nor for the want of the statement of the value or price of any matter or thing; or of the amount of damages, injury or spoil; in any case where the value or price, or the amount of damage, injury or spoil, is not of the essence of the offence.

III. [The remaining method of prosecution to which we formerly referred, is that which dispenses with any previous finding by a jury to fix the authoritative stamp of verisimilitude upon the accusation (*b*). An instance of this, by the common law, was when a thief was taken *with the mainour*, that is, with the thing stolen upon him *in manu*. For he might, when so detected, *flagrante delicto*, be brought into court, arraigned, and tried, without indictment; as, by the Danish law, he might be taken and hanged upon the spot, without accusation or trial. But this proceeding was taken away by several statutes in the reign of Edward the third; so that the only species of prosecution without a previous indictment or presentment by a grand jury, now seems to be that of information.]

The term *Information* is variously applied in our law. We understand by it, either a charge laid before a justice or justices of the peace with a view to a summary convic-

(*b*) Vide sup. p. 360.

tion, and of which we have already had occasion to speak; or else a complaint exhibited by a common informer in one of the courts of law, to recover a penalty, which some penal statute has made recoverable after the conviction of the offender by him, who shall first sue, or inform, for the same, and that either on his own behalf or (more usually) on behalf of himself and the Crown jointly; or else a complaint exhibited in the name of the Crown itself in the Exchequer or in Chancery, in respect of some civil claim on the part of the Crown;—or, lastly, a complaint by the Crown in the Queen's Bench, in respect of some offence under the degree of treason or ordinary felony. It is to informations of the last species only, that our attention is to be at present directed; all the others having been sufficiently noticed in the course of the present work under their appropriate heads.

[The informations then that are exhibited in the name of the sovereign, in criminal cases, are of two kinds; first, those which are truly and properly his own suits, and filed *ex officio* by his own immediate officer, the attorney-general: secondly, those in which, though the Crown is the nominal prosecutor, yet it is at the relation of some private person or common informer. And these last are filed in the Queen's Bench by the sovereign's coroner and attorney, usually called "The Master of the Crown Office;" who is, for this purpose, the standing officer of the public (*c*).

The object of the sovereign's own criminal informations, filed *ex officio* by his attorney-general, are properly such enormous misdemeanors as peculiarly tend to disturb or endanger his government, or to molest or affront him in the regular discharge of his royal functions. For offences so high and dangerous, in the punishment or prevention of which a moment's delay would be fatal, the law

(*c*) See R. *v.* Smithson, 4 B. & Ad. 861; R. *v.* Eve, 5 Ad. & El. 780; R. *v.* Larrieu, 7 A. & E. 277. One species of such information is that in the nature of a writ of *quo warranto*.

[has given to the Crown the power of an immediate prosecution by this method, without waiting for any previous application to any other tribunal: which power, thus necessary not only to the ease and safety, but even to the very existence of the executive government, was originally reserved in the great plan of the English constitution, wherein provision is wisely made for the due preservation of all its parts. The objects of the other species of criminal informations,—that is to say, such as are filed by the master of the Crown Office upon the complaint or relation of a private subject,—are any gross and notorious misdemeanors, riots, batteries, libels and other immoralities of an atrocious kind, not indeed peculiarly tending to disturb the government, (for those are left to the care of the attorney-general,) but which, on account of their magnitude or pernicious example, deserve the most public animadversion (*d*).] In such cases as these, the course is for the party aggrieved to move the Queen's Bench for a rule to show cause why a criminal information should not be filed; and such motion, in case of libel, must be supported by an affidavit expressly denying the truth of the imputation (*e*). This rule is served on the defendant according to the ordinary course of practice on motions; and, if no sufficient cause is shown, is made absolute, and an information filed accordingly. And when either kind of criminal information is filed in court, it must be tried by a petty jury of the county wherein the offence arose (unless, indeed, the case be of such importance as to require to be tried *at bar*), and for that purpose it is sent down by a writ of *nisi prius* into that county; and there tried either by a common or special jury, like a civil action.

(*d*) Hawk. P. C. b. 2, c. 26, s. 1. A person who applies for and obtains a criminal information, is thereby concluded from bringing an action in respect of the same grievance. (See R. *v.* Sparrow, 2 T. R. 198, Hil. 1788; Walker *v.* Cooke, 16 M. & W. 344.)

(*e*) R. *v.* Wright, 2 Chit. Rep. 162.

[There can be no doubt but that this mode of prosecution by information (or suggestion) filed on record by the attorney-general, or by the master of the Crown Office, is as antient as the common law itself. For, as the sovereign was bound to prosecute, or at least to lend the sanction of his name to a prosecutor, whenever a grand jury informed him upon their oaths that there was a sufficient ground for instituting a criminal suit; so, when these, his immediate officers, were otherwise sufficiently assured that one had committed a gross misdemeanor, either personally against him or his government, or against the public peace and good order, they were at liberty, without waiting for any further intelligence, to convey that information to the Court of King's Bench by a suggestion on record, and to carry on the prosecution in the name of the Crown. But these informations (of every kind) are confined, by the constitutional law, to mere misdemeanors only: for wherever any felonious offence is charged, the same law requires that the accusation be warranted by the oath of twelve men, before the party shall be put to answer it (*f*). And, as to those offences in which informations were allowed as well as indictments, so long as they were confined to this high and respectable jurisdiction, and were carried on in a legal and regular course in his majesty's Court of King's Bench, the subject had no reason to complain. The same notice was given, the same process was issued, the same pleas were allowed, the same trial by jury was had, the same judgment was given by the same judges, as if the prosecution had originally been by indictment. But when the statute 3 Hen. VII. c. 1, had extended the jurisdiction of the court of Star-Chamber, the members of which were the sole judges of the law, the fact and the penalty; and when the statute of 11 Hen. VII. c. 3, had

(*f*) "Any *capital* offence" is the expression of Blackstone (4 Bl. Com. p. 310). And in this he agrees with Sir M. Hale (2 Hale, P. C. 151.) But the doctrine seems to extend to felonies generally, whether capital or not. See Com. Dig. "Information," A. 1; 1 Chit. C. L. 844.)

[permitted informations to be brought by any informer upon any penal statute, (not extending to life or member,) at the assizes, or before the justices of the peace, who were to hear or determine the same according to their own discretion; then it was that the legal and orderly jurisdiction of the Court of King's Bench fell into disuse and oblivion; and Empson and Dudley, (the wicked instruments of King Henry the seventh,) by hunting out obsolete penalties, and this tyrannical mode of prosecution, with other oppressive devices, continually harassed the subject, and shamefully enriched the Crown (*g*). The latter of these Acts was soon, indeed, repealed by statute 1 Henry VIII. c. 6; but the court of Star-Chamber continued in high vigour, and daily increasing its authority, for more than a century longer, till finally abolished by statute 16 Car. I. c. 10.

Upon this dissolution, the old common law authority of the Court of King's Bench, as the *custos morum* of the nation (*h*), being found necessary to reside somewhere for the peace and good government of the kingdom, was again revived in practice (*i*). And it is observable, that in the same Act of Parliament which abolished the court of Star-Chamber, a conviction by information is expressly reckoned up as one of the legal modes of conviction of such persons as should offend a third time against the provisions of that statute (*k*). It is true, Sir Matthew Hale, who presided in this court soon after the time of such revival, is said to have been no friend to this method of prosecution (*l*): and if so, the reason of such his dislike was probably the ill use which the master of the Crown Office then made of his authority, by permitting the subject to be harassed with vexatious informations whenever applied to by any malicious or revengeful prosecutor;

(*g*) 1 And. 157.

(*h*) See Prynn's case, 5 Mod. 464.

(*i*) Styl. Rep. 217, 245; Styl. Pract. tit. "Information," p. 187, (edit. 1657); Fountain's case, 1 Sid. 152; Dudley's case, 2 Sid. 71.

(*k*) Stat. 16 Car. 1, c. 10, s. 6.

(*l*) Prynn's case, 5 Mod. 460.

[rather than from any doubt of their legality, or propriety upon urgent occasions (*m*). For the power of filing informations, without any control, then resided in the breast of the master; and, being filed in the name of the Crown, they subjected the prosecutor to no costs, though on trial they proved to be groundless. This oppressive use of them in the time preceding the Revolution, occasioned a struggle, soon after the accession of King William, to procure a declaration of their illegality by the judgment of the Court of King's Bench (*n*). But Sir John Holt, who then presided there, and all the judges, were clearly of opinion that this proceeding was grounded on the common law, and could not be then impeached. And in a few years afterwards a more temperate remedy was applied in parliament, by statute 4 & 5 W. & M. c. 18, which enacted, that the clerk of the Crown shall not file any information without express direction from the Court of King's Bench; and that every prosecutor permitted to promote such information, shall give security by a recognizance of twenty pounds to prosecute the same with effect, and to pay costs to the defendant, in case he be acquitted thereon, unless the judge who tries the information shall certify that there was reasonable cause for filing it; and at all events, to pay costs unless the information shall be tried within a year after issue joined (*o*). But there is a proviso in this Act, that it shall not extend to any other informations than those which are exhibited by the master of the Crown Office, and consequently informations at the suit of the Crown, filed by the attorney-general, are nowise restrained thereby.]

Besides these methods of prosecution, there formerly existed another, called an *appeal*,—which was at the suit

(*m*) 1 Saund. 301; R. *v.* Starling, 1 Sid. 174.

(*n*) M. 1 W. & M., Prynn's case, ubi sup.; Comb. 141; Far. 361; R. *v.* Berchet, 1 Show. 106.

(*o*) As to the costs of a criminal information for libel, see Reg. *v.* Latimer, 20 L. J. (N. S.) Q. B. 129.

of the subject, not of the Crown, and demanded punishment on account of the private injury rather than the public offence. This proceeding (involving, as we shall see hereafter, a trial by *battle*, instead of by jury,) though leading, in case of conviction, to the same punishment as if the offender had been indicted, might yet be remitted by the private prosecutor; [and probably originated in those times when a private pecuniary satisfaction, called a *weregild*, was constantly paid to the party injured, or his relations, to expiate enormous offences (*p*): a custom derived to us, in common with other northern nations, from our ancestors, the antient Germans; among whom, according to Tacitus, "*luitur homicidium certo armentorum ac pecorum numero; recipitque satisfactionem universa domus*" (*q*).] Prosecutions by the method of appeal were allowed in cases of murder, larceny, rape, arson and mayhem (*r*). They were not however confined to these cases of private injury, for it was also antiently permitted to any subject to appeal another subject of the crime of high treason, and that either in the courts of common law or in parliament: or, (for treasons committed beyond the seas,) in the court of the high constable and marshal (*s*). But these appeals for treason were, in the

(*p*) 4 Bl. Com. 313. In our Saxon Laws, particularly those of Athelstan, (Judic. Civ. Lund. Wilk. 71,) we find the several weregilds for homicide established in progressive order, from the death of the ceorl or peasant to that of the king himself. And see the laws of Hen. 1, c. 12.

(*q*) De Mor. Germ. c. 21. And in another place, c. 12: "*Delictis, pro modo pœnarum, equorum pecorumque numero convicti mulctantur. Pars mulctæ regi vel civitati; pars ipsi qui vindicatur, vel propinquis ejus, exsolvitur.*" In the same manner, by the Irish Brehon Law, a composition by pecuniary recompence might be made between a murderer and the friends of the deceased. Spenser, St. of Ireland, p. 1513 (edit. Hughes).

(*r*) 4 Bl. Com. p. 314. Of the appeal in case of murder, we may remark, that it might be brought either by the wife for the death of her husband; or by the heir male within four degrees of blood, for the death of his ancestor. (Ibid.)

(*s*) We are informed by Blackstone (vol. iv. p. 314), that as late as the year 1631 there was a trial by battle awarded in the court of chivalry, on an appeal of treason

opinion of Sir M. Hale, taken away by 5 Edward III. c. 9; 25 Edward III. c. 4; and 1 Henry IV. c. 14 (*t*). And though the remaining appeals continued in force till our own day (*u*), yet, by 59 Geo. III. c. 46, it was enacted, that it should thenceforth not be lawful for any person to sue an appeal for treason, murder, felony, or other offence; any law or usage to the contrary notwithstanding.

An indictment and an information, therefore, are the only methods now extant in the laws of England, for the prosecution of offences; of which that by indictment is the most general (*x*). We shall therefore confine our subsequent observations principally to this method; but with some reference, also, as occasion may arise, to the course of proceeding by information.

beyond the seas. This was the case of Donald Lord Rea *v.* David Ramsey (Rushw. vol. ii. part ii. p. 112).

(*t*) 1 Hale, P. C. 349.

(*u*) See Abraham Thornton's case, 1 B. & Ald. 405.

(*x*) "Prosecution" is here used in its more usual sense, and is not intended to include the proceeding by way of impeachment, or with a view to a summary conviction before justices.

CHAPTER XIX.

OF PROCESS: AND HEREIN, OF CERTIORARI.

[WE are now to inquire into the manner of issuing process, after indictment found, to bring in the accused to answer it (*a*). We have hitherto supposed the offender to be in custody or else held to bail, before the finding of the indictment; in which cases, he is immediately after the finding, or as soon as convenience permits, to be arraigned thereon. But if he has fled or secretes himself so as to avoid the operation of the warrant; or if no warrant has ever been issued for his arrest, or at least no commitment to take his trial has taken place:—still an indictment may be preferred against him in his absence: since, were he present, he could not be heard before the grand jury against it. And if it be found, then process must issue to bring him into court, to appear or be arraigned. For the indictment cannot be tried unless he appears: according to the rule of justice in all cases, and the express provision of statute 28 Edw. III. c. 3, in capital ones, that no man shall be put to death without being brought to answer by due process of law.]

In general, the process on an indictment is by writ of *capias*, where the person charged is not in custody, and in cases not otherwise provided for by statute (*b*). It is, also, the practice upon an indictment found during the assizes or sessions, to issue a *bench warrant*, to apprehend the defendant (*c*). And in certain cases, we have already seen, that a person against whom an indictment

(*a*) Vide sup. p. 344.

(*b*) 25 Edw. 3, c. 14; 2 Hale, P. C. 195; R. v. Yandell, 4 T. R. 521; 1 Chit. Cr. 440.

(*c*) 1 Chit. Cr. L. pp. 86, 339.

has been found or information filed for a misdemeanor, may be apprehended and held to bail by a warrant from a judge of the Queen's Bench, under the provisions of 48 Geo. III. c. 58, s. 1 (*d*). But process on indictment found, may now, under the provisions of a later statute, be by a *justice's* warrant, instead of suing out a *capias*, or bench warrant, or proceeding under the provisions of the Act of Geo. III. For by 11 & 12 Vict. c. 42, s. 3, it is enacted, that where an indictment shall have been found in any court of oyer and terminer, general gaol delivery, or general or quarter sessions of the peace, against any person then at large,—a certificate of the fact shall be granted by the proper officer to the prosecutor; and upon production thereof to any justice of the peace for the place where the offence is alleged in the indictment to have been committed, or in which the person indicted is or is suspected to be, the justice shall issue a warrant to apprehend such person, and cause him to be brought up to be dealt with according to law: and, upon its being proved that he is the person named in the indictment, shall, without further inquiry, commit him for trial, or admit him to bail. On the other hand, if the person against whom the indictment is found, shall be in prison for any other offence,—then, upon proof thereof, the justice shall issue his warrant to the gaoler, commanding him to detain such prisoner in custody, until by writ of *habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the indictment, or until he shall be otherwise discharged by due course of law (*e*).

(*d*) Vide sup. p. 345.

(*e*) In the particular case of a prisoner, ordered by the Queen's Bench to be tried at the Central Criminal Court, under 19 & 20 Vict. c. 16, he is to be removed to the prison of that court without *habeas corpus* or other writ. And so also by 30 & 31 Vict. c. 35, s. 10, where an indictment is found against one who has been held to bail, and he shall be then in the prison belonging to the jurisdiction of the court under warrant of commitment or sentence for some other offence, the court may, by order in writing, direct the governor of such prison to bring him up to be arraigned without a *habeas*.

Supposing, however, the defendant not to be found, so that his apprehension cannot be effected by any of the above means,—he is then liable, on his non-appearance to the indictment, to be *outlawed* (*f*).

[The first process for this purpose in cases of treason or felony is a writ of *capias;* but in misdemeanors the process is less summary: for here there is, in the first place a writ of *venire facias,* which is in the nature of a summons, to cause the party to appear; and if, by the return to such *venire,* it appears that the party hath lands in the county whereby he may be distrained, then a distress infinite shall be issued from time to time till he appears. But if the sheriff returns that he has no lands in his bailiwick, then, upon his non-appearance, a writ of *capias* shall issue; and if he cannot be taken upon the first, a second and a third shall issue, called an *alias* and a *pluries capias.* And after the several writs have issued in a regular number,—according to the nature of the respective crimes,—without any effect, the offender shall be put in the *exigent,* in order to his outlawry; that is, he shall be exacted (proclaimed, or required to surrender), at five successive sheriff's county courts; and a writ of proclamation shall also be issued (*g*); and if he be returned *quinto exactus,* and does not appear at the fifth exaction or requisition, then he is adjudged to be *outlawed,* or put out of the protection of the law: so that he is incapable of taking the benefit of it in any respect, either by bringing actions or otherwise, and his property is forfeited to the Crown (*h*). And outlawry for treason or felony

(*f*) Outlawry does not lie against a corporation, or a parish, or a hundred; nor against a peer, except for treason, felony, or breach of the peace; nor against an infant under fourteen. (1 Chit. Cr. L. 348.) In case of outlawry of a woman, she is said to be *waived.*

(*g*) 4 & 5 W. & M. c. 22, made perpetual by 7 & 8 Will. 3, c. 36, s. 4. (See 30 & 31 Vict. c. 59).

(*h*) A defendant in a *civil* action is also liable, *after judgment,* to be outlawed, supposing him to abscond leaving the judgment debt unpaid. It may be noticed here, that nothing in the Felony Act, 1870 (33 & 34 Vict. c. 23), whereby forfeiture is abolished as a consequence of a conviction for treason or felony,

[amounts to a conviction and attainder of the offence, as much as if the offender had been found guilty by his country (*i*). His life is, however, still under the protection of the law, so that though antiently an outlawed felon was said to have *caput lupinum*, and might be knocked on the head, like a wolf, by any one that should meet him (*k*);—because, having renounced all law, he was to be dealt with as in a state of nature, when every one that should find him might slay him;—yet now, to avoid such inhumanity, it is holden that no man is entitled to kill him wantonly or wilfully; but in so doing is guilty of murder (*l*), unless it happens in the endeavour to apprehend him (*m*): for any person may arrest an outlaw on a criminal prosecution,—either of his own head, or by writ or warrant of *capias utlagatum*,—in order to bring him in to be dealt with according to law.] It is further to be observed, that though an outlawry may be frequently reversed by plea, or by proceedings in error, according to the nature of the case (*n*), it is necessary that, in the case of felony, the defendant must for this purpose render himself into custody (*o*); whereupon he may then take any technical objection to the regularity of the process; and such objection, if allowed, will have the effect of reversing the outlawry, and enable the party accused to plead and defend himself against the indictment (*p*). In one instance, indeed, though the outlawry be regular, its consequences may still be avoided: for by 5 & 6 Edw. VI. c. 11, (which permits outlawry for treason to be awarded against persons residing abroad,)—if a person so outlawed shall, within one year, yield himself to the chief justice, and offer

"shall affect the law of forfeiture consequent upon outlawry." (Sect. 1.)

(*i*) 2 Hale, P. C. 205.

(*k*) Mirr. c. 4, s. 4; Co. Litt. 128.

(*l*) 1 Hale, P. C. 497.

(*m*) Bracton, l. 3, tr. 3, c. 11.

(*n*) In a modern case, outlawry on error was reversed, after the lapse of 116 years, for want of due proclamations having been made. (Tynte *v.* Reginam, 7 Q. B. 216.)

(*o*) Solomon *v.* Graham, 5 Ell. & Bl. 320.

(*p*) Chit. Cr. L. 368, 369; 4 Bl. Com. 320.

to traverse the indictment, he shall be admitted so to do; and, being acquitted of the indictment, shall be discharged of the outlawry.

[Thus much for process to bring in the offender after indictment found; during which stage of the prosecution it is, that writs of *certiorari facias* are usually had, though they may also be had at any time before trial;—or, as it seems, at any time before judgment is given, and even afterwards, where error does not lie (*q*);—to certify, and remove the indictment, with all the proceedings thereon, from any inferior court of criminal jurisdiction, into the Queen's Bench. For this is the sovereign's ordinary court of justice in causes criminal; and has consequently the power of issuing such writ to any court of rank subordinate to its own in causes of this description, unless the *certiorari* be taken away by the express words of some Act of Parliament. A *certiorari* removing the proceedings into the Queen's Bench is commonly granted for one of these four purposes: either, 1, to consider and determine the validity of an indictment, and the proceedings thereon, and to quash or confirm them as there is cause; 2, where it is surmised that a partial or insufficient trial will probably be had in the court below, in order to have the person against whom it is found, tried *at bar*, or else before the justices of *nisi prius*, according to the course of a civil action (*r*); 3, in order to plead the royal pardon there; or, 4, in order to issue process of outlawry against the offender, in places where the process of the inferior court will not reach him (*s*). Such writ of *certiorari*, when issued and delivered to the inferior court, for removing any record or other proceeding, as well upon indictment as otherwise, supersedes the jurisdiction of such inferior court; and makes all subsequent proceedings therein entirely erroneous and illegal, unless indeed the

(*q*) 1 Chit. C. L. 380.

(*r*) 14 Hen. 6, c. 1; 6 Hen. 8, c. 6; 4 Rep. 43; 2 Hale, P. C. 41. Et vide sup. p. 308.

(*s*) 2 Hale, P. C. 210.

[Queen's Bench remands the record to the court below, to be there tried and determined. A *certiorari* may be granted at the instance of either the prosecutor or the defendant; and the former was once entitled to demand it as a matter of right, though the application of the latter has always been dependent on the discretion of the court (*u*).] But now, by 5 & 6 Will. IV. c. 33, and 16 & 17 Vict. c. 30, s. 5, no *certiorari* shall issue at the instance of the prosecutor, or of any other person (except the attorney-general), without motion first made in the Queen's Bench, or before some judge thereof, and leave obtained, in the same manner as where application is made on the part of the defendant: and moreover, before the allowance of any writ of *certiorari*, the party on whose behalf it is applied for, must enter into a recognizance before a judge of the Queen's Bench or justice of the peace, in such sum and with such sureties as the court or judge may direct, and with such conditions as are contained in the previous statutes 5 & 6 W. & M. c. 11, and 8 & 9 Will. III. c. 33, passed in relation to the same subject (*x*). And by 16 & 17 Vict. c. 30, s. 4, it is enacted, that no indictments, except against bodies corporate not authorized to appear by attorney in the court in which the indictment is preferred, shall be removed

(*u*) 4 Bl. Com. 321. In the exercise of this discretion, a *certiorari* has been seldom granted at the instance of the defendant, to remove indictments either from the justices of gaol delivery; or after issue found, or confession of the fact, in any of the courts below. (See Hawk. P. C. b. 2, c. 27, s. 27: R. *v.* Gwynne, Burr. 749; R. *v.* Kingston, Cowp. 283; R. *v.* Harrison, 1 Chit. Rep. 571.)

(*x*) By 5 & 6 Will. 4, c. 33, a recognizance was required only where the writ was obtained on the part of the defendant. But by 16 & 17 Vict. c. 30, s. 5, it is also required from the prosecutor; and this last statute provides, moreover, for the payment of the costs incurred subsequent to the removal, either by the defendant or the prosecutor, according to the ultimate issue of the proceedings. As to the terms on which a *certiorari* will be granted, see The Queen *v.* Jewell, 7 Ell. & Bl. 140. No recognizance on removal is required from the prosecutor, in the case of an indictment found at quarter sessions against a *corporation*. (See The Queen *v.* Manchester, 7 Ell. & Bl. 463.)

into the Queen's Bench, or into the Central Criminal Court, either at the instance of the prosecutor or of the defendant (other than the attorney-general acting on behalf of the Crown,)—unless it be made to appear to the court from which the writ is to issue, that a fair and impartial trial of the case cannot be had in the court below; or that some question of law of more than usual difficulty and importance is likely to arise upon the trial; or that a view of the premises in respect whereof any indictment is preferred, or a special jury, may be required for the satisfactory trial of the same.

Another Act (19 & 20 Vict. c. 16) contains provisions, of which some notice is proper in this place, with regard to the trial of offences, the indictment for which has been removed by *certiorari* into the Queen's Bench. 1. Whenever any indictment or inquisition has been so removed in the case of some felony or misdemeanor alleged to have been committed in a place *out of the jurisdiction* of the Central Criminal Court, the Queen's Bench (or a judge thereof in vacation) is empowered to order the trial thereof to be there tried nevertheless,—provided it shall appear expedient to the ends of justice that such course should be taken (*y*). 2. Wherever any person shall have been committed or held to bail for any such felony or misdemeanor, the Queen's Bench, or judge in vacation, if it shall appear expedient that the person charged shall be tried at the Central Criminal Court, may make an order to that effect (*z*); and thereupon a writ of *certiorari* shall be issued to the justices of oyer and terminer, or of the peace, or coroner, (as the case may require,) commanding them to certify and return to that court any indictment or inquisition which is then pending or shall thereafter be

(*y*) 19 & 20 Vict. c. 16, s. 1.

(*z*) By 25 & 26 Vict. c. 65, a similar provision is made in reference to the trial of persons subject to the *Mutiny Act*, who are charged with having committed murder or manslaughter out of the jurisdiction of the Central Criminal Court, or persons subject to that Act.

found against such person (*a*). 3. Wherever a *certiorari* shall be delivered to any court for the purpose of removing an indictment or inquisition therefrom, any person charged thereby who shall then be in prison, shall not be discharged by such court, but shall remain there till discharged by due course of law (*b*).

[It is at this stage of the proceeding also—viz., after indictment found, and before arraignment—that indictments found by the grand jury against a peer must, in consequence of a writ of *certiorari*, be certified and transmitted into the court of parliament, or into that of the lord high steward of Great Britain (*c*). And also, that in places of exclusive jurisdiction, as the two universities, indictments must be delivered up, on challenge and claim of cognizance, to the courts therein established by charter, and confirmed by Act of Parliament, to be therein respectively tried and determined (*d*).]

Of process upon *informations*, not much requires to be said. In general the course of proceeding is similar to that upon indictments: but the first process is by writ of *subpœna* instead of *venire;* and if the defendant does not appear on this, a *capias* is awarded (*e*). Supposing it to be necessary, however, to proceed to outlawry, the first process is by *venire facias*, as in the case of an outlawry upon an indictment for a misdemeanor, and not by *subpœna* (*f*).

(*a*) 19 & 20 Vict. c. 16, s. 3.

(*b*) Sect. 11. See sects. 8, 9, 10, as to the recognizances required, (in cases of orders made, or writs of certiorari issued under this Act,) from the person charged, or the prosecutor, or witnesses, to take their trial, prosecute or give evidence, (as the case may require,) at the Central Criminal Court.

(*c*) Vide sup. pp. 229, 302.

(*d*) Vide sup. p. 325.

(*e*) 1 Chit. Cr. L. 865.

(*f*) Ibid. 866.

CHAPTER XX.

OF ARRAIGNMENT AND ITS INCIDENTS.

THE appearance of the offender, (enforced by the methods pointed out in the last chapter, unless he appears voluntarily, or is already in custody,) must, in general be in *person;* though in indictments or informations in the Queen's Bench, for misdemeanors, an appearance *by attorney* is allowed (*a*). And in misdemeanors generally, in whatever court the proceedings are instituted, the trial of the defendant, after he has once appeared, is permitted to take place in his absence (*b*). Immediately on the appearance to an indictment, the offender is to be *arraigned* thereon; which is the next stage of criminal prosecution (*c*).

[To arraign is nothing else but to call the prisoner to the bar of the court, to answer the matter charged upon him in the indictment (*d*). The prisoner is to be called to the bar by his name; and it is laid down in our antient books (*e*), that, even under an indictment of the highest

(*a*) By 19 & 20 Vict. c. 16, s. 6, it is provided that on application to the Queen's Bench for an order, that a person charged with an offence alleged to have been committed, out of the jurisdiction of the Central Criminal Court, shall nevertheless be there tried,—it shall not be necessary for the accused to be brought to appear in *person* before the Queen's Bench or judge to whom the application is made.

(*b*) 4 Bl. Com. 375; 1 Chit. Cr. L. 411.

(*c*) Vide sup. p. 344.

(*d*) This word in Latin (says Sir M. Hale, vol. ii. p. 216) is no other than *ad rationem ponere*, (and in French *ad reson*, or abbreviated *a resn*,) that is, "to call to account."

(*e*) Bract. l. 3, De Coron. c. 18, s. 3; Mirr. c. 5, ss. 1, 54; Flet. l. 1, c. 31, s. 1; Brit. c. 5; Staundf. P. C. 78; 3 Inst. 34; Kel. 10; 2 Hale, P. C. 219; Hawk. P. C. b. 2, c. 28, s. 1.

[nature, he must be brought to the bar without irons, or any manner of shackles or bonds: unless there be evident danger of any escape, and then he may be secured with irons. But yet in Layer's case, A.D. 1722, a difference was taken between the time of arraignment and the time of trial; and accordingly the prisoner stood at the bar in chains, during the time of his arraignment (*f*).

On a charge of treason or felony, when the prisoner is brought to the bar, he is called upon by name to hold up his hand (*g*); which, though it may seem a trifling circumstance, yet is of this importance, that by the holding up of his hand *constat de personâ;* and he own himself to be of that name by which he is called (*h*). However, it is not an indispensable ceremony; for being calculated merely for the purpose of identifying the person, any other acknowledgment will answer the purpose as well; therefore, if the prisoner obstinately and contemptuously refuses to hold up his hand, but confesses he is the person named, it is fully sufficient (*i*).

Then the indictment is to be read to him distinctly in the English tongue; which was law even while all other proceedings were in Latin; that he may fully understand his charge. After which, it is to be demanded of him, whether he be guilty of the crime whereof he stands indicted, or not guilty.

When a criminal is arraigned he either *stands mute* or *confesses the fact;* which circumstances we may call *incidents* to the arraignment; or else he *pleads* to the indictment; which is to be considered as the next stage

(*f*) State Tr. iv. 230. And see Hawk. P. C. b. 2, c. 28, s. 1, n. (2); Waite's case, 1 Leach, C. C. 36.

(*g*) By 19 & 20 Vict. c. 16, s. 7, it is provided, that whenever any indictment or inquisition shall have been transmitted or removed to the Central Criminal Court under the provisions of that Act, the person charged shall be thereon arraigned in the same manner in all respects as if the offence had been committed within the jurisdiction of that court; and the indictment or inquisition had been originally returned there.

(*h*) 2 Hale, P. C. 219.

(*i*) R. *v.* Ratcliffe, 1 W. Bl. 3

[of the proceedings. But, first, let us observe these incidents to the arraignment—of standing mute, or confession.]

I. Regularly a prisoner is said to stand mute when, being arraigned for treason or felony, he either, 1, makes no answer at all; or, 2, answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise (*j*). In the first case the rule of the antient law was, that a jury was to be impanelled to inquire whether the prisoner stood obstinately mute, or was dumb *ex visitatione Dei*. If the latter appeared to be the case, the judges were to proceed to the trial, and examine all points as if he had pleaded not guilty (*k*). But if found to be obstinately mute, then, in treason, it was held that standing mute was equivalent to conviction; and the law was the same as to all misdemeanors. [But upon indictment for any other felony, the prisoner, after *trina admonitio*, and a respite of a few hours, was subject to the barbarous sentence of *peine forte et dure* (*l*); viz. to be remanded to prison and put into a low dark chamber, and there laid on his back on the bare floor naked, unless where decency

(*j*) He was also formerly considered as standing mute, if, upon pleading not guilty, he at the same time refused *to put himself upon the country*, that is, refer the matter to trial by jury. (2 Hale, P. C. 316; 4 Bl. Com. 324, 340.) But now, by statute 7 & 8 Geo. 4, c. 28, s. 1, he shall by the plea of not guilty, without any further form, be deemed to have put himself upon his country, for trial; and the court shall order a jury for the trial of such person accordingly.

(*k*) 4 Bl. Com. 324; Hawk. P. C. b. 2, c. 30, s. 7.

(*l*) Blackstone (vol. iv. p. 327) remarks on this punishment, that it has been doubted whether it subsisted at the common law, or was introduced in consequence of the statute Westminster the first. He inclines to this latter opinion, and cites 2 Inst. 179; 2 Hale, P. C. 322; Hawk. P. C. b. 2, c. 30, s. 16; Staundf. P. C. 149; Barr. 82; Emlyn on 2 Hale, P. C. 322, and Year Book, 8 Hen. 4, c. 2. By these two last authorities, it would appear that at common law, the standing mute in *felony* (as well as in treason and misdemeanors) was a confession of the charge. As to *peine forte et dure*, much information will be found in Reeves's Hist. Eng. L. vol. ii. p. 134; vol. iii. pp. 133, 250, 418. That author thinks it was introduced sometime between the fifth year of Henry the third, and the third year of Edward the first.

[forbade; that there should be placed upon his body as great a weight of iron as he could bear, and more: that he should have no sustenance, save only on the first day three morsels of the worst bread, and on the second day three draughts of standing water that should be nearest to the prison door; and that in this situation such should be alternately his daily diet, *till he died;* or, as antiently the judgment ran, *till he answered* (*m*).]

Afterwards, however, it was provided by 12 Geo. III. c. 20, that standing mute in felonies should be equivalent to a conviction: and now by 7 & 8 Geo. IV. c. 28, s. 2, it is enacted, that if any person, being arraigned upon, or charged with, any indictment or information for treason, felony, piracy or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or informa-

(*m*) 4 Bl. Com. 327; Britt. cc. 4 and 22; Flet. l. 1, c. 34, s. 33; Hawk. P. C. b. 2, c. 30, s. 16. Blackstone (vol. iv. p. 326) remarks upon this strange proceeding, that it is a practice of a different nature from the *rack*, or *question*, to extort a confession from criminals,—*this* having been only used to compel a man to put himself upon his trial, *that* being a species of trial itself. As to the rack, he says that "it is "utterly unknown to the law of "England; though once, when the "Dukes of Exeter and Suffolk, and "other ministers of Henry the "sixth, had laid a design to intro-"duce the civil law into this king-"dom as the rule of government; "for the beginning thereof, they "erected a rack for torture; which "was called in derision the Duke "of Exeter's Daughter, and still "remains in the Tower of London, "(3 Inst. 35,) where it was occa-"sionally used as an engine of "state, not of law, more than once "in the reign of Queen Elizabeth. "But when upon the assassination "of Villiers, Duke of Buckingham, "by Felton, it was proposed, in the "Privy Council, to put the assassin "to the rack, in order to discover "his accomplices, the judges (being "consulted) declared unanimously, "to their own honour and the "honour of the English law, that "no such proceeding was allowable "by the laws of England" Mr. Hallam observes, that though it be most certain that the English law never recognized the use of torture, yet there were many instances of its employment in the reigns of Elizabeth and James; and, among others, in the case of the Gunpowder Plot. He says, indeed, that in the latter part of the reign of Elizabeth, "the "rack seldom stood idle in the "Tower;" and cites Lingard, (note U,) for a specification of the different kinds of torture used. (Hall. Const. Hist. vol. i. p. 201; vol. ii. p. 11.)

tion (*n*);—in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person; and the plea so entered shall have the same force and effect, as if such person had actually pleaded the same (*o*). When there is reason to doubt, however, whether the prisoner is sane, a jury should be charged to inquire whether he is sane or not; which jury may consist of any twelve persons who may happen to be present (*p*); and upon this issue, the question will be whether he has intellect enough to plead, and to comprehend the course of the proceedings. If they find the affirmative, the plea of not guilty may be entered, and the trial will proceed (*q*); but if the negative, the provision of 39 & 40 Geo. III. c. 94, s. 2, is then applicable; by which it is enacted, that insane persons indicted for any offence, and on their arraignment found to be insane by a jury lawfully impanelled for that purpose, so that they cannot be tried upon the indictment, —shall be ordered by the court to be kept in strict custody till the royal pleasure be known (*r*).

(*n*) In the case where the prisoner is deaf and dumb, he may be communicated with by signs, or the indictment may be shown to him, with the usual questions written on paper. (See Jones's case, 1 Leach, 120; Thompson's case, 2 Lewin, 137; R. *v.* Dyson, 7 Car. & P. 306; 1 Chit. Cr. L. 417.)

(*o*) This course was taken in R. *v.* Bitton, 6 Car. & P. 306.

(*p*) 1 Chit. Cr. L. 424.

(*q*) There have been several instances in which persons found to be mute by the visitation of God, have been tried, and had sentence passed upon them. (See Jones's case, ubi sup.; Steel's case, 2 Leach, 507.) But in Blackstone's time it was a point yet undetermined whether judgment of death could be given against a prisoner who had never pleaded, and could say nothing in arrest of judgment. (4 Bl. Com. 325; 2 Hale, P. C. 317. And see Mr. Christian's notes to Blackstone, ubi sup.)

(*r*) Vide sup. p. 26. In several cases the course taken, when the prisoner has stood mute, has been to put *three* points to the jury; first, whether the prisoner is mute of malice or not; secondly, whether he can plead to the indictment or not; thirdly, whether he is of sufficient intellect to comprehend the course of the proceedings. (R. *v.* Dyson, 7 Car. & P. 305; R. *v.* Pritchard, ibid. 303.)

II. [The other incident to arraignment, exclusive of the plea, is the prisoner's actual *confession* of the indictment. Upon a simple and plain confession, the court hath nothing to do but to award judgment: but it is usually very backward in receiving and recording such confession, at least in capital cases, out of tenderness of the life of the subject; and will generally advise the prisoner to retract it and plead to the indictment (*s*).

But there is another species of confession, which we read much of in our antient books, of a far more complicated kind, which is called *approvement;* and that was, when a person, indicted of treason or felony, and arraigned for the same, did confess the fact before plea pleaded, and appeal or accuse others, his accomplices, of the same crime, in order to obtain his pardon. In this case he was called an *approver,* or prover, *probator;* and the party appealed, or accused, was called the *appellee.* Such approvement could only be in capital offences; and it was, as it were, equivalent to an indictment, since the appellee was equally called upon to answer it; and if he had no reasonable and legal exceptions to make to the person of the approver,—which indeed were very numerous,—he was obliged to put himself on his trial by the country: and, if found guilty, suffered the judgment of the law; and the approver had his pardon *ex debito justitiæ.* On the other hand, if the appellee were acquitted by the jury, the approver received judgment to be hanged, upon his own confession of the indictment; for the condition of his pardon failed, viz. the conviction of some other person; and therefore his conviction remained absolute.

But it was purely in the discretion of the court, to permit the approver thus to appeal or not; and, in fact, this course of admitting approvements hath been long disused; for the truth is, as Sir Matthew Hale observes, that more mischief arose to good men by these kinds of

(*s*) 2 Hale, P. C. 225.

[approvements, upon false and malicious accusations of desperate villains, than benefit to the public by the discovery and conviction of real offenders; and, therefore, in the times when such appeals were admitted, great strictness and nicety were held therein (*t*).]

It has also been usual for the justices of the peace, by whom persons charged with felony are committed to gaol, —in cases where it has appeared probable that the evidence would otherwise be insufficient to obtain a conviction,—to hold out a hope to some one of the accomplices, that if he will fairly disclose the whole truth as a witness on the trial, and bring the other offenders to justice, he shall himself escape punishment. Such an accomplice is usually said to be admitted to become *queen's evidence;* but his admission in that capacity, requires the subsequent sanction of the judges of gaol delivery (*u*). Nor will a person in general be admitted as queen's evidence, if it appear that he is charged with any other felony than that in question (*x*). The testimony of an accomplice is in all cases, indeed, regarded with just suspicion (*y*); and unless this statement be corroborated in some material part by unimpeachable evidence, the jury are usually advised by the judge to acquit the prisoner notwithstanding (*z*). Moreover, if a felon, after having confessed the crime and being admitted as queen's evidence, fails in the condition on which he was so received, and refuses to give the jury, on

(*t*) See 2 Hale, P. C. c. 29; Hawk. P. C. b. 2, c. 24.

(*u*) See R. *v.* Rudd, Cowp. 331.

(*x*) 2 C. & P. 411. See R. *v.* Lee, R. & R. C. C. R. 361; R. *v.* Brunton, ibid. 454.

(*y*) On this subject see the remarks of Holt, C. J., in Charnock's case, 4 St. Tr. 494.

(*z*) 1 Phil. Ev. 9th edit. 31; Taylor on Evidence, p. 779, 2nd edit. And as to the nature of the confirmation required, see R. *v.* Addis, 6 C. & P. 388; R. *v.* Webb, ibid. 595; R. *v.* Moores, 7 C. & P. 270; R. *v.* Wilkes, ibid. 272; Despard's case, 28 How. St. Tr. 488. It is held, however, that the jury may legally convict if they think fit, on the unsupported testimony of an accomplice. (1 Phil. Ev. 30; R. *v.* Hastings, 7 C. & P. 152; Taylor on Evidence, p. 779, 2nd edit.; R. *v.* Stubbs, 1 Dearsley's C. C. R. 555.)

the trial of his accomplice, such fair and full information as shall be in his knowledge, he is then himself liable to be tried for the offence, and may be convicted on his own confession (*a*).

(*a*) 1 Phil. Ev. 29. Accordingly upon a trial at York before Mr. Justice Buller, the accomplice denied in his evidence all that he had before confessed; upon which the prisoner was acquitted. But the judge ordered an indictment to be preferred against the accomplice for the same crime; and on his previous confession, and other circumstances, he was convicted and executed. (4 Bl. Com. by Christian, p. 331, *in notis*.)

CHAPTER XXI.

OF PLEA AND ISSUE.

[WE are now to consider the plea of the prisoner, or defendant; that is, the defensive matter alleged by him on his arraignment, if he does not confess or stand mute (*a*). This is either—

I. A plea to the jurisdiction.
II. A demurrer (*b*).
III. A plea in abatement.
IV. A special plea in bar: or,
V. The general issue (*c*).

(*a*) Vide sup. p. 344. By 19 & 20 Vict. c. 16, s. 6, it is provided, that on application to the Queen's Bench for an order, that a person charged with an offence alleged to have been committed, out of the jurisdiction of the Central Criminal Court, shall nevertheless be there tried,—it shall not be necessary for the accused to plead to the indictment or inquisition in the Queen's Bench, when the order applied for is made.

(*b*) See Bl. Com. vol. iv. p. 332. It has not been thought material to alter this arrangement of Blackstone's; but, in strictness, a *demurrer* is not a *plea*. It is rather an exception taken to the indictment or information in point of law, as a reason why the defendant should not be compelled to plead to its allegations.

(*c*) Besides these pleas, there were formerly the *declinatory* pleas of *sanctuary*, and of *benefit of clergy*. (See 2 Hale, P. C. 236.) As to the former, we may remark, that the law of sanctuary was introduced, and continued, during the superstitious veneration paid to consecrated ground in the time of popery; and existed in England from a period soon after the conversion of the Saxons to Christianity. (See Reeves's Hist. Eng. Law, vol. i. p. 19; vol. iii. p. 137; vol. iv. pp. 182, 314, 320.) The statement of the law on this subject by Blackstone (vol. iv. p. 332) is as follows:—"If a person "accused of any crime, except "treason and sacrilege, had fled to "any church or churchyard, and, "within forty days after, went in "sack-cloth and confessed himself

[I. A plea to the jurisdiction, is where an indictment is taken before a court that hath no cognizance of the offence (*d*): as if a man be indicted for treason at the quarter sessions (*e*). In such or in similar cases, he may except to the jurisdiction of the court, without answering at all to the crime alleged (*f*).] But a formal plea to the jurisdiction is of rare occurrence; it being competent to a defendant to bring forward this sort of objection, in

" guilty before the coroner; and " declared all the particular circum- " stances of the offence, and took " the oath in that case provided, " viz. that he abjured the realm, " and would depart from thence " forthwith at the port which should " be assigned him, and would never " return without leave from the king, " he by this means saved his life; " provided he observed the condi- " tions of the oath, by going with a " cross in his hand, and with all con- " venient speed, to the port assigned, " and embarking. For if during this " forty days' privilege of sanctuary, " or on his road to the sea side, he " was apprehended and arraigned in " any court for this felony, he might " plead the privilege of sanctuary, " and had a right to be remanded " if taken out against his will."—(Mirr. c. 1, s. 13; Hawk. P. C. b. 2, c. 32.) But by this abjuration his blood was attainted, and he forfeited all his goods and chattels. (Hawk. P. C. b. 2, c. 9, s. 44.) However, the immunity of these sanctuaries,—which consisted not only of churches and churchyards, but of certain other places in various parts of this kingdom, viz. in Westminster, Wells, Norwich, York, &c.—became very much abridged by the statutes 26 Hen. 8, c. 13; 27 Hen. 8, c. 19, and 39 Hen. 8, c. 12. And by the statute 21 Jac. 1, c. 28, all privilege of sanctuary, and abjuration consequent thereupon, was utterly taken away and abolished. And the opposing of any process in pretended privileged places is (by later statutes) made a felonious offence. Vide sup. p. 227.

As to *benefit of clergy*, vide post, p. 440, n. (*c*). We shall only remark here, that though it might be the subject of a plea, it was not usually brought forward in that shape, but in arrest of judgment.

(*d*) By 19 & 20 Vict. c. 16, s. 7, wherever any indictment or inquisition shall have been transmitted or removed to the Central Criminal Court, under the provisions of that Act,—any person charged with any offence thereby shall plead to such indictment or inquisition, and shall be tried in the said Central Criminal Court, in the same manner in all respects as if such offence had been actually committed within the jurisdiction of that court, and the indictment or inquisition had been originally there presented or returned. See also 25 & 26 Vict. c. 65, s. 7.

(*e*) Vide sup. p. 318.

(*f*) 2 Hale, P. C. 256.

some cases by way of demurrer, or by motion in arrest of judgment; in others under the general issue (*g*).

II. A demurrer. This arises when the facts as alleged in the indictment or information are allowed to be true, but the person accused takes exception to the sufficiency of the charge on the face of it: as if he insists that the facts stated are no felony, treason, or whatever the crime is alleged to be. Thus, for instance, if a man be indicted for *feloniously* stealing a greyhound: which is an animal not the subject of larceny at common law (*h*), and the stealing whereof is not made felony by any statute, but only a misdemeanor;—in this case, the party indicted may demur to the indictment, denying it to be felony, though he confesses the act of taking the animal. If on demurrer to an indictment, the point of law be adjudged *for* the defendant, and the objection be on matter of substance, the judgment is that he be dismissed and discharged: if the objection be merely formal, then that the indictment be quashed (*i*). On the other hand, if the judgment be *against* the defendant, and the offence for which he is indicted be a misdemeanor or a felony, but not capital—such judgment, according to the better authorities, is final (*k*). And even in capital cases, some have held that if, on demurrer, the point of law be adjudged against the defendant, he shall have judgment and execution as if convicted by verdict (*l*). But by more modern authorities it has been held, that he shall in such cases be allowed to plead the general issue, "not guilty," after a demurrer determined against him (*m*); for the mis-

(*g*) R. *v.* Fearnley, 1 T. R. 316; R. *v.* Johnson, 6 East, 583.

(*h*) Vide sup. p. 177.

(*i*) 1 Chit. Cr. L. 443, 444; Andr. 147.

(*k*) Hawk. P. C. b. 2, c. 31, s. 7; R. *v.* J. Taylor, 3 B. & C. 502; Reg. *v.* Faderman, 1 Den. C. C. 565.

(*l*) Bro. *Peremptory*, 86; 3 Staundf. 150, C.; 2 Inst. 178; 2 Hale, P. C. 257.

(*m*) The defendant has been also permitted (both in capital and in other felonies), to demur and plead not guilty at the same time. (R. *v.* Phelps, 1 C. & M. 181; R. *v.* Adams, ib. 299; R. *v.* Purchase, ib. 617.)

take being for the most part a mistake in point of law, and in the conduct of his pleading; it must be presumed that the law will not suffer him by such niceties to lose his life (*n*). Owing to this uncertainty, however, as to the proper form of judgment, and the power that has been allowed to defendants of urging all objections upon the general issue, or by motion in arrest of judgment, as well as upon demurrer, demurrers to indictments have been seldom used. But objections at this early stage have been not unfrequently taken in another and more summary shape, viz., by a motion on the part of the prisoner to *quash* the indictment (*o*); a course which, in a very clear and obvious case, the practice of the courts allows (*p*). Indeed the power of bringing forward objections of this nature at any later period, is now materially limited; it being provided by 14 & 15 Vict. c. 100 (*q*), that all objections for *formal* defects shall be taken by demurrer or motion to quash the indictment, and not afterwards; and, if made, that they shall be amendable forthwith.

III. A plea in abatement, or dilatory plea, is founded on some matter of fact extraneous to the indictment, tending to show that it is defective in point of form; and such plea has principally occurred in the case of a *misnomer*; i. e. a wrong name, or a false addition to the defendant,—as where James Allen, gentleman, has been indicted by the name of John Allen, esquire, and has pleaded that he has the name of James and not of John, and that he is a gentleman and not an esquire. But in the case of misnomer, no advantage at all now accrues to the defendant

(*n*) 4 Bl. Com. 334. See Hawk. P. C. b. 2, c. 31, ss. 5, 6, and 2 Hale, P. C. 225.

(*o*) The court may also quash the indictment on its own view. (See R. *v.* Wilson, 6 Q. B. 620; R. *v.* Dunn, Ry. & M. P. C. 146.) And the motion to quash may be made after plea pleaded. (The Queen *v.* Heane, 4 B. & Smith, 947.)

(*p*) 1 Chit. Cr. L. 299.

(*q*) 14 & 15 Vict. c. 100, ss. 24, 25. And see 7 Geo. 4, c. 64, s. 20.

by a plea in abatement; for by 7 Geo. IV. c. 64, s. 19, no indictment or information shall be abated by reason of any dilatory plea of misnomer: but if the court shall be satisfied, by affidavit or otherwise, of the truth of such plea, it shall forthwith cause the indictment or information to be amended according to the truth; and shall call upon the party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded. And by 14 & 15 Vict. c. 100, s. 24, no indictment shall be held insufficient for want of, or imperfection in, the addition of any defendant. Let us therefore next consider a more substantial kind of plea, viz.

IV. A special plea in bar; which goes to the merits of the indictment, and gives a reason why the prisoner ought to be discharged from the prosecution. These are principally of four kinds (*r*). A former acquittal; a former conviction; a former attainder; or a pardon.

1. [The plea of *autrefois acquit*, or a former acquittal, is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy more than once, for the same offence (*s*): and hence it is allowed as a consequence, that when a man is once fairly found not guilty upon an indictment or other prosecution, before any court having a competent jurisdiction of the offence, he may plead such acquittal in bar of any subsequent accusation for the same crime (*t*).] This however applies only to an acquittal by verdict of a petty

(*r*) In the particular case where a parish is indicted for not repairing a road, or a county for not repairing a bridge, another kind of special plea in bar occurs; for the parish or county may respectively plead, in discharge of their presumptive liability, that some other party is liable to a special obligation to repair.

(*s*) "Jeopardy *of his life*," is the expression of Blackstone (vol. iv. p. 335). The maxim, however, is not confined to capital felonies, and extends even to misdemeanors. See an instance of *autrefois acquit* pleaded in a case of misdemeanor, R. *v.* Taylor, 3 B. & C. 502.

(*t*) See Beak *v.* Thyrwhit, 3 Mod. 194; Hawk. P. C. b. 2, c. 35, s. 10.

jury (*u*): and therefore if a man be committed to take his trial for a crime at some particular assizes or sessions whereat no bill is preferred against him, he is still liable to be indicted at a subsequent assizes or sessions, for the same crime; and if the bill against him be thrown out by the grand jury, or if the petty jury having him in charge be discharged by the judge before verdict (*x*), he is in either case liable to be indicted again (*y*). The doctrine applies, also, only to the case where the first indictment was not substantially erroneous. For if it were, the former prosecution is no bar, because the defendant was never legally in jeopardy (*z*). It is also to be observed, that, in general, the crime of which the defendant was before acquitted must be identical with that with which he now stands charged: but upon this point, distinctions of much nicety arise. Thus if a man be acquitted upon an indictment of murder, he may not only plead *autrefois acquit* to a subsequent indictment for the murder, but even to an indictment for the manslaughter of the same person; or *è converso*, if he be indicted for manslaughter, and be acquitted, he shall not be indicted for the same death, as murder; for the two cases differ only in the degree of guilt, and the fact is the same (*a*). So if he be indicted for a murder, as committed on a certain day, and be afterwards indicted again for the murder of the same person on a different day, he may plead *autrefois acquit*, and aver it to be the same felony; for the day is not material (*b*). On the other hand, if a

(*u*) 2 Hale, P. C. 243, 246; Hawk. P. C. b. 2, c. 35, s. 6. See The Queen *v.* Charlesworth, 1 B. & S. 507.

(*x*) See Winsor *v.* The Queen, Law Rep., 1 Q. B. 289.

(*y*) 1 Chit. Cr. L. 458; 2 Hale, P. C. ubi supra. But the grand jury cannot, after throwing out the bill, find another bill against him for the same offence, at the *same* assizes or sessions. (R. *v.* Humphreys, Carr. & M. 601; R. *v.* Austin, 4 Cox, C. C. 386.)

(*z*) 4 Rep. 45, a; 2 Hale, P. C. 393. See The Queen *v.* Green, 26 L. J. (M. C.) 17.

(*a*) 2 Hale, P. C. 246.

(*b*) 2 Hale, P. C. 244. Hale adds "Besides the death is of a person

man be indicted as accessory, and acquitted, that acquittal will be no bar to an indictment as principal, nor *è converso*. It was formerly doubted, indeed, whether he might not plead an acquittal as principal, to a second indictment charging him as accessory before the fact; but the general doctrine is now held to apply to that case also (*c*). For though the offence may in some respects be considered as the same, the prisoner may be convicted under the second indictment, upon facts which would not have warranted his conviction under the first (*d*). We may conclude our remarks on the subject of the plea of *autrefois acquit*, by observing that the defendant, in adopting this plea, usually also pleads at the same time the general issue, denying the felony charged; and if the former plea is found against him, the trial proceeds upon the second (*e*).

2. [The plea of *autrefois convict*, or a former conviction (whether judgment was ever given or not) for the same identical crime, is also a good plea in bar to an indictment: and this depends upon the same principle as the former, that no man ought to be twice brought into danger for one and the same crime: and it is governed in general by the same rules (*f*).] And if the former conviction was for a capital offence, and followed by an actual judgment of death, the defendant may resort to—

3. The plea of *autrefois attaint*, or a former attainder

"certain, who can be but once "killed." The same law, however, as he himself proceeds to observe, "applies to an indictment of rob- "bery;" though it is possible that several robberies may be committed on several days.

(*c*) Vide sup. p. 45.

(*d*) See Hawk. P. C. b. 2, c. 35, s. 11; 2 Hale, P. C. 244; Fost. 361; R. *v.* Birchenough, 1 M. C. C. R. 477; R. *v.* Parry, 7 C. & P. 836.

(*e*) Arch. Cr. L. by Jervis, 9th ed. p. 91; R. *v.* Sheen, 2 Car. & P. 635. As to this plea, and also as to that of *autrefois convict*, it is provided by 14 & 15 Vict. c. 100, s. 28, that "it shall be sufficient for the de- "fendant to state that he has been "lawfully acquitted or convicted "(as the case may be) of the said "offence charged in the indictment." And see as to the plea of *autrefois acquit*, Queen *v.* Bird, 20 L. J. (M. C.) 70.

(*f*) Hawk. P. C. b. 2, c. 36, s. 10.

for the same crime (*g*); for this, also, is a good plea in bar, depending upon the same principle, and governed in general by the same rules, as the plea of *autrefois convict*. It might formerly indeed have been pleaded where a man, after being attainted of one felony, was afterwards indicted for *another* offence; for the prisoner being considered as dead in law by the first attainder, and having therefore already forfeited all that he had, it was considered as absurd and superfluous to endeavour to attaint him a second time (*h*). But now, by 7 & 8 Geo. IV. c. 28, s. 4, it is enacted, that no plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment.

4. Lastly, a *pardon* may be pleaded in bar, as at once destroying the end and purpose of the indictment, by remitting that punishment which the prosecution is calculated to inflict (*i*). In capital offences, there was one advantage that used to attend pleading a pardon in bar, or in arrest of judgment, *before* sentence was passed, which gave it by much the preference to pleading it *after* sentence or attainder. This was that, by stopping the judgment, it stopped the attainder; and prevented that corruption of blood, which followed in certain cases on conviction; and which could not afterwards be purged except by Act of parliament (*k*). But there is now, as we shall see hereafter, no corruption of blood; and as the title of pardons is applicable also to other stages of the prosecution,—a pardon being pleadable (according to the period at which it is obtained) not only in bar of the indictment; but, after verdict, in arrest of judgment; or after judgment, in bar of execution:—the further consideration of them shall be reserved, till we have gone through every other title except only that of execution.

(*g*) As to attainder, vide post, c. XXIII.

(*h*) 4 Bl. Com. 336; Hawk. P. C. b. 2, c. 36.

(*i*) As to pardons, vide post, c. XXV.

(*k*) 4 Bl. Com. 338.

Before we conclude this head of special pleas in bar, it is proper to observe, [that if such a plea of a prisoner charged with felony shall be found against him upon issue tried by a jury, or adjudged against him in point of law by the court, still he shall not be concluded or convicted thereon, but shall have judgment of *respondeat ouster;* and may plead over to the felony the general issue, not guilty (*l*). For the law allows many pleas by which a prisoner may escape the punishment of felony, but only one plea in consequence whereof it can be inflicted: viz. on the general issue, after an impartial examination and decision of the facts, by the unanimous verdict of a jury.] It remains therefore that we consider—

V. The general issue, that is to say, the plea of *not guilty*. This is the proper form, wherever the prisoner means either to deny or to justify the charge in the indictment; and it is to be observed, that in such case there can be no special plea, either in treason or felony. [Thus on an indictment for murder, a man cannot plead that it was in his own defence, against a robber; but he must plead the general issue, not guilty, and give this special matter in evidence. For, (besides that such pleas do in effect amount to the general issue, since, if true, the prisoner is most clearly not guilty,) as the facts in treason are laid to be done *proditoriè*, and in felony, to be done *felonicè;* these charges of a traitorous or felonious intent are the points and very *gist* of the indictment; and must be answered directly by the general negative, not guilty,—the effect of which is, that on the one hand it puts the prosecutor to the proof of every material fact alleged in the indictment or information; and on the other it entitles the defendant to avail himself of any defensive circum-

(*l*) 2 Hale, P. C. 239. R. *v.* Gibson, 8 East, 110. This is confined, as stated in the text, to felonies. It does not apply to indictments, or informations, for misdemeanors (R. *v.* Taylor, 3 B. & C. 502); having been originally established only *in favorem vitæ*.

[stances, as amply as if he had pleaded them in a specific form. So that this is, upon all accounts, the most advantageous plea for the prisoner (*m*).]

By the plea of not guilty, the prisoner puts himself upon the trial by jury (*n*); and when the record comes afterwards to be made up,—for the proceedings ought regularly to be *recorded*,—the prosecutor on the part of the Crown adds the *similiter* (as it is called), by the words that he "doth the like" (*o*). But even before this formal entry, the similiter is supposed to be added by the prosecutor, immediately on the plea of not guilty being pleaded by the defendant (*p*),—which brings the parties to issue. And then they proceed as soon as conveniently may be, to the trial; the manner of which will be considered at large in the next chapter.

(*m*) 2 Hale, P. C. 258. This plea, as we have seen, the court may order to be entered for the defendant, when he stands mute of malice, &c.; vide sup. p. 391.

(*n*) The defendant, on pleading not guilty, used formerly to refer the matter expressly to the trial by jury; but by 7 & 8 Geo. 4, c. 28, s. 1, he is now to be deemed to do so (in treason or felony) by simply pleading not guilty.

(*o*) By 7 & 8 Geo. 4, c. 64, s. 20, no judgment after verdict shall be stayed or reversed for want of a *similiter*.

(*p*) Other ceremonies were formerly observed,—which involved the true etymology of the word *culprit*. When the prisoner pleaded not guilty, *non culpabilis*, or *nient culpable*, it was abbreviated on the minutes of the court thus, "*non* (or *nient*) *cul.*," and the joining of issue thereon by the prosecutor was expressed by the abbreviation "*prit.*," the precise origin of which latter expression is somewhat doubtful. In course of time, it became the practice for the officer of the court to read aloud these words, without regard to their real meaning (which was beginning to be forgotten, owing to the disuse of law French); and to apply them as an appellation of the prisoner himself; for when a prisoner pleaded not guilty, the officer used to say, "*Culprit*, how wilt thou be tried?" to which the latter usually added, "By God, and the country," meaning by a jury. (See 4 Bl. Com. 339, and note by Christian.) Blackstone also (ubi sup.) takes occasion, in reference to this subject, to remark upon another corruption which has taken place and is still observable in the law French; viz. in the prologue to all our public proclamations, *oyez*, or *hear ye*, which is generally pronounced, most unmeaningly, *oh! yes!*

CHAPTER XXII.

OF TRIAL AND CONVICTION.

[THE several methods of trial and conviction of offenders, established by the laws of England, were formerly more numerous than at present, through the superstition of our Saxon ancestors; who like other northern nations, were extremely addicted to divination, a character which Tacitus observes of the antient Germans (*a*). They therefore invented certain methods of purgation or trial, to preserve innocence from the danger of false witnesses, and in consequence of a notion that God would always interpose miraculously to vindicate the guiltless.] To these, though most of them have been long since, and all are now, abolished, some notice seems to be due, on account of their legal and historical associations, and as matter of curiosity,—before we proceed to those existing methods which constitute the proper subject of the chapter (*b*).

I. [The most antient species of trial was that by *ordeal* (*c*) which was peculiarly distinguished by the appellation of *judicium Dei*, and sometimes *vulgaris purgatio*, to distinguish it from the canonical purgation, which was by the oath of the party. This was of two sorts,

(*a*) De Mor. Germ. 10.

(*b*) Vide sup. p. 344.

(*c*) Wilk. Leges Ang. Sax. LL. Inæ, c. 77. See as to this ordeal, Turn. Angl. Sax. vol. ii. p. 532; Hall. Mid. Ag. vol. ii. p. 466; in which last work an instance is given of a citizen of London undergoing the ordeal of cold water, in a case of murder, in the reign of Henry the second, and on failure therein being hanged.

[either *fire*-ordeal, or *water*-ordeal; the former being confined to persons of higher rank, the latter to the common people (*e*). Both these might be performed by deputy; but the principal was to answer for the success of the trial, the deputy only venturing some corporal pain for hire, or perhaps for friendship (*f*). Fire-ordeal was performed either by taking up in the hand, unhurt, a piece of red-hot iron, of one, two, or three pounds weight; or else by walking,—bare foot, and blindfold,—over nine red-hot ploughshares, laid lengthwise, at unequal distances; and if the party escaped being hurt, he was adjudged innocent: but if it happened otherwise, (as without collusion it usually did,) he was then condemned as guilty. However, by this latter method, Queen Emma, the mother of Edward the Confessor, is mentioned to have cleared her character, when suspected of familiarity with Alwyn, Bishop of Winchester (*g*).

Water-ordeal was performed, either by plunging the bare arm up to the elbow in boiling water, and escaping unhurt thereby: or by casting the person suspected into a river or pond of cold water, where if he floated without any action of swimming, it was deemed an evidence of his guilt, but if he sank, he was acquitted. It is easy to trace out the traditional relics of this water-ordeal, in the ignorant barbarity that has been practised in many countries, to discover witches by casting them into a pool of water, and drowning them to prove their innocence. And in the eastern empire the fire-ordeal was used to the same purpose by the emperor Theodore Lascaris; who, attributing his sickness to magic, caused all those, whom he suspected, to handle the hot iron; thus joining, as has

(*e*) *Tenetur se purgare is qui accusatur, per Dei judicium; scilicet per calidum ferrum, vel per aquam, pro diversitate conditionis hominum: per ferrum calidum, si fuerit homo liber; per aquam, si fuerit rusticus.*"—Glanv. s. 14, c. 1. See also Mirrour, c. 3, s. 23.

(*f*) This is still expressed in that common mode of speech, "of going through fire and water to serve another."

(*g*) Tho. Rudborne, Hist. Maj. Winton, l. 4, c. 1.

[been well remarked, to the most dubious crime in the world the most dubious proof of innocence (*h*).

And indeed this purgation by ordeal, seems to have been very antient, and very universal, in the times of superstitious barbarity. It was known to the antient Greeks; for, in the Antigone of Sophocles, a person suspected by Creon of a misdemeanor, declares himself ready "to handle hot iron and to walk over fire," in order to manifest his innocence; which, the scholiast tells us, was then a very usual purgation (*i*). And Grotius gives us many instances of water-ordeal in Bithynia, Sardinia, and other places (*k*).

One cannot but be astonished at the folly and impiety of pronouncing a man guilty, unless he was cleared by a miracle; and of expecting that all the powers of nature should be suspended, by an immediate interposition of Providence to save the innocent, whenever it was presumptuously required. And yet in England, so late as King John's time, we find grants to the bishops and clergy, to use the *judicium ferri, aquæ, et ignis* (*l*). And both in England and Sweden, the clergy presided at this trial; and it was only performed in the churches or in other consecrated grounds: for which Stiernhook gives the reason, "*non defuit illis operæ et laboris pretium; semper enim ab ejusmodi judicio, aliquid lucri sacerdotibus obveniebat*" (*m*). But to give it its due praise, we find the canon law very early declaring against trial by ordeal, or *vulgaris purgatio*, as being the fabric of the devil, "*cum sit contra præceptum Domini, non tentabis Dominum Deum tuum*" (*n*). Upon this authority,—though the canons themselves were of no validity in England,—it was thought proper to disuse and abolish this trial en-

(*h*) Sp. L. b. 12, c. 5.
(*i*) V. 270.
(*k*) Grot. on Numb. v. 17. And see Mod. Univ. Hist. vii. 266.
(*l*) Spelm. Gloss. 435.
(*m*) De Jure Sueon. l. 1, c. 8.
(*n*) Decret. part 2, caus. 2, qu. 5, dist. 7; Decret. lib. 3, tit. 50, c. 9; and Gloss. ibid.

[tirely in our courts of justice by an act of parliament in the third year of Henry the third, according to Sir Edward Coke (*o*); or rather by an order of the king in council (*p*).

II. Another species of purgation,—somewhat similar to the former, but probably sprung from a presumptuous abuse of revelation in the ages of dark superstition,—was the *corsned*, or morsel of execration, being a piece of cheese or bread, of about an ounce in weight, which was consecrated with a form of exorcism, desiring of the Almighty that it might cause convulsions and paleness, and find no passage, if the man was really guilty; but might turn to health and nourishment if he was innocent (*q*). As the water of jealousy, among the Jews, was, by God's special appointment, to cause the belly to swell, and the thigh to rot, if the woman was guilty of adultery (*r*). This corsned, then, was given to the suspected person, who at the same time also received the holy sacrament (*s*); if, indeed, the corsned was not (as some have suspected) the sacramental bread itself, till the subsequent invention of transubstantiation preserved it from profane uses with a more profound respect than formerly. Our historians assure us, that Godwin, earl of Kent, in the reign of king Edward the Confessor, abjuring the death of the king's brother, at last appealed to his corsned, "*per buccellam deglutiendam abjuravit;*" which stuck in his throat and killed him (*t*). This custom has long since fallen into

(*o*) 9 Rep. 32. It had been abolished in Denmark above a century before. (Mod. Univ. Hist. xxxii. 105.)

(*p*) 1 Rym. Fœd. 228; Spelm. Gloss. 326; 2 Pryn. Rec. Append. 20; Seld. Eadm. fol. 48.

(*q*) Spelm. Gloss. 439.

(*r*) Numb. v. .

(*s*) "*Si quis alteri ministrantium accusetur et amicis destitutus sit cum sacramentales non habeat, vadat ad judicium quod Anglicè dicitur* 'corsned,' *et fiat sicut Deus velit, nisi super sanctum corpus Domini permittatur ut se purget.*" —Wilk. Leges Ang. Sax. LL. Canut. c. 6.

(*t*) Ingulph.

[complete disuse; though the remembrance of it still subsists, in certain phrases of abjuration retained among the common people (*u*).

III. The trial by *battle*, duel, or single combat (*x*); was another species of presumptuous appeal to Providence, under an expectation that Heaven would unquestionably give the victory to the innocent or injured party. The first written injunction of judiciary combats that we meet with, is in the laws of Gundebald, A.D. 501, which are preserved in the Burgundian code; yet it does not seem to have been a local custom of this or that particular tribe, but to have been the common usage of all the northern people from the earliest times (*y*).] This species of trial obtained not only in appeals on criminal charges (*z*) and in approvements (*a*), but also in an antient but now abolished civil action called a writ of right (*b*). And the ceremonials observed were very similar, whether the issue to be tried arose in a civil action or on a criminal charge, except that in the latter case the combat was waged by the parties themselves, and not by champions, as in the

(*u*) As "I will take the sacrament upon it," "May this morsel be my last," and the like.

(*x*) On the subject of trial by combat, some valuable information will be found in Hallam's Mid. Ag. vol. i. pp. 277—294.

(*y*) Seld. on Duels, c. 5; et vide Stiern. de Jure Sueon. l. 1, c. 7. Mr. Hallam says (vol. i. p. 278, *in notis*), that it may be met with under the first Merovingian kings in France; and was established by the laws of the Alemanni or Swabians, and also of the Lombards; and he cites Baluz. t. 1, p. 80, and Muratori, Script. Rer. Ital. t. 2, c. 65.

(*z*) As to appeals, vide sup. p. 378.

(*a*) 2 Hale, P. C. p. 233. As to approvements, vide sup. p. 394.

(*b*) The last occasion on which trial by battle in a *writ of right* was awarded, of which we have an authentic account, was in the 13 Eliz. in the year 1571; and it was granted, says Sir Henry Spelman, *non sine magnâ jurisconsultorum perturbatione*. (See Dyer, 301, from whose report it appears that no actual combat took place, the demandants making default.) Blackstone (vol. iii. p. 338) refers, however, to a later trial, which he states was waged in the county palatine of Durham in 1638. (See Cro. Car. 512.)

civil action (*d*). Thus in *a writ of right* (respecting which the accounts handed down to us are the more copious, and from which therefore what follows as to this method of trial is partly drawn), when the tenant pleaded the general issue; viz. that he had more right to hold than the demandant to recover; [he might offer to prove it by the body of his champion (*e*): which tender being accepted by the demandant, the champion for the tenant threw down his glove, as a gage or pledge; and was then said to *wage* battle with the champion of the demandant; who by taking up the gage or glove accepted, on his part, such challenge (*f*). A piece of ground was then set out; and the champions were introduced, armed with batons and staves an ell long, and a four-cornered leather target. In the court military, indeed, they fought with sword and lance, according to Spelman and Rushworth: as likewise, in France, only villeins fought with the buckler and baton; gentlemen, armed at all points. And upon this and other circumstances, Montesquieu hath, with great ingenuity, not only deduced the impious custom of private duels on imaginary points of honour,—but hath also traced the heroic madness of knight errantry, from the same original of judicial combats (*g*). But to proceed:

When the champions arrived within the lists, the champion of the tenant took his adversary by the hand, and made oath that the tenements in dispute were not the right of the demandant; and the champion of the demandant, then taking the other by the hand, swore in the

(*d*) See Flet. l. 1, c. 34; Hawk. P. C. b. 2, c. 45.

(*e*) The wager of battle was the only decision of the question of right on a writ of right, after the Conquest,—until Henry the second by consent of parliament, introduced the *grand assize*, a peculiar species of trial by jury, in concurrence therewith; giving the tenant his choice of either the one or the other. The establishment of this alternative, Glanvil, chief justice to Henry the second, and probably his adviser herein, considers as a most noble improvement, (as in fact it was,) of the law. (L. 2, c. 7.)

(*f*) 3 Bl. Com. 338, 339.

(*g*) Sp. L. b. 28, cc. 20, 22.

[same manner that they were; next an oath against sorcery and enchantment, was to be taken by both the champions, in this or a similar form, "Hear this, ye justices, that I "have this day neither eat, drank, nor have upon me "neither bones, stones, ne grass, nor any enchantment, "sorcery, or witchcraft, whereby the law of God may be "abased, or the law of the devil exalted.—So help me "God and his saints" (*h*).

The battle was thus begun; and the combatants were bound to fight till the stars appeared in the evening: and if the champion of the tenant could defend himself till the stars appeared, the tenant was to prevail in his cause; but if victory declared itself for either party, for him was judgment finally given. This victory might arise from the death of either of the champions, or by either of them proving *recreant*, i. e., yielding, and pronouncing the horrible word of *craven;* a word of disgrace and obloquy, rather than any determinate meaning (*i*). The effect of the termination of the battle in either of these modes was, that the vanquished party forfeited his claim, and paid a fine (*k*); and the champion, if recreant, was condemned *amittere liberam legem;* i. e., to become infamous, and not to be accounted *liber et legalis homo*,—being supposed by the event to be proved foresworn, and not fit to be put upon a jury, or admitted as a witness in any cause (*l*).]

(*h*) See 3 Bl. Com. p. 340, who cites Dyer, 301, and Spelm. Gloss. 103. See also Rushw. Coll. vol. ii. pt. 2, fol. 112; 19 Rym. 322; R. *v.* Dryden, Cro. Car. 512, and 11 Harg. St. Tr. 124, where will be found an account of the proceedings in the last trial by battle, which took place in this country, viz. that in the case of Lord Rea *v.* Ramsey (see also 7 Car. 1). Mr. Hallam (vol. 1, p. 278, 7th ed.) refers for the ceremonies of trial by combat, to Honard, Anc. Loix de France, t. 1, p. 264; Velly, t. 6, p. 106; Recueil des Historiens, t. 2, pref. p. 189; Ducange v. *Duellum*. But he says the great original authorities are the Assises de Jerusalem, c. 104, and Beaumanoir, c. 31.

(*i*) Bl. Com. ubi sup.

(*k*) Hall. Mid. Ag. vol. i. p. 278, 7th ed.

(*l*) 3 Bl. Com. p. 340. The compiler of the *Assises de Jerusalem*, c. 167, thinks it would be very injurious if no wager of battle were to be allowed against witnesses in causes affecting succession; since

So also, in an appeal or approvement on a *criminal* charge, the trial by battle, if demanded by the appellee, was carried on with equal solemnity as above described when it was waged in a writ of right: [but as each party was here to fight in his own proper person,—the appellant or approver, if a woman, a priest, an infant, or of the age of sixty, or lame or blind, might counterplead, and refuse this method of trial; and compel the appellee to put himself upon the country, that is, submit to trial by jury. And peers of the realm, bringing an appeal, were not to be challenged to wage battle, on account of the dignity of their persons; nor the citizens of London by special charter, because fighting seems foreign to their education and employment. So likewise if the crime were notorious, as if the thief were taken with the *mainour*, or the murderer in the room with the bloody knife,—the appellant might counterplead and refuse the tender of battle from the appellee (*n*); for it was unreasonable that an innocent man should stake his life against one who was already half convicted (*o*).

As already hinted, the form and manner of waging the battle upon appeals and approvements, were much the same as upon a writ of right, only the oaths of the two combatants were vastly more striking and solemn (*p*). The appellee, when appealed of the felony, pleaded not guilty, and threw down his glove; and declared he would defend the same with his body. The appellant, in accepting the challenge, took up the glove; and replied that he was ready to make good his appeal, body for body: and

otherwise every right heir might be disinherited; as it would be easy to find two persons who would perjure themselves for money, if they had no fear of being challenged for their testimony. The demandant's champion was in fact a *witness* upon the question of right; and this passage, as Mr. Hallam remarks, "indicates "the real cause of preserving the "judicial combat; systematic per- "jury in witnesses, and want of "legal discrimination in judges."—Hallam, ubi sup. p. 282.

(*n*) Hawk. P. C. b. 2, c. 45, s. 7.

(*o*) 4 Bl. Com. 347.

(*p*) Flet. l. 1, c. 34; Hawk. P. C. b. 2, c. 46.

[thereupon the appellee, taking the Bible in his right hand, and in his left the right hand of his antagonist, swore to this effect, "*Hoc audi, homo, quem per manum teneo, &c.,*" "Hear this, O man, whom I hold by the hand, who callest "thyself John by the name of baptism, that I, who call "myself Thomas by the name of baptism, did not "feloniously murder thy father, William by name, nor "am anywise guilty of the said felony; so help me God "and the saints: and this I will defend against thee by "my body, as this court shall award." To which the appellant replied, holding the Bible and his antagonist's hand in the same manner as the other, "Hear this, "O man, whom I hold by the hand, who callest thyself "Thomas by the name of baptism, that thou art perjured; "and therefore perjured, because that thou feloniously "didst murder my father, William by name; so help me "God and the saints: and this will I prove against thee "by my body, as this court shall award" (*q*). The battle was then fought with the same weapons, the same solemnities and the same oaths against amulets and sorcery, that were used in the civil combat: and if the appellee were so far vanquished as not to be able or willing to fight any longer, he was adjudged to be hanged immediately; and then, as also if he were slain in the battle, Providence was deemed to have determined against him, and his blood was attainted. But if he killed the appellant, or could maintain the fight from sun rising till the stars appeared in the evening, he was acquitted. So also if the appellant became recreant, and pronounced the word craven, he lost his *liberam legem*, and became infamous; and the appellee recovered his damages, and was for ever

(*q*) There is a striking resemblance between this process and that of the court of Arcopagus, at Athens, for murder; wherein the prosecutor and prisoner were both sworn in the most solemn manner: the prosecutor that he was related to the deceased (for none but near relatives were permitted to prosecute in that court), and that the prisoner was the cause of his death; the prisoner, that he was innocent of the charge against him. (Pott. Antiq. b. 1, c. 19.)

[quit, not only of the appeal, but of all indictments likewise for the same offence (*r*).]

It is not a little singular that this method of trial remained a part of our legal system till the early part of the present century. It was, however, abolished by statute (59 Geo. III. c. 46), attention having been drawn to the inconvenience of its retention, by a case which occurred in the year 1818,—in which an appeal of murder having been brought by the brother of the deceased, the party accused (who had already been acquitted on an ordinary indictment) demanded a trial by battle; though no combat actually took place, the proceedings being discontinued by the appellant (*s*).

IV. [The fourth method of trial in criminal cases, is that by the peers of Great Britain, in the court of parliament, (or in the court of the lord high steward,) when a peer, or peeress, is charged with any treason or felony, or misprision of either. Of this enough has been said in a former chapter (*t*): to which we shall only now add, that in the method and regulation of its proceedings, it differs but little from the trial *per patriam* or by jury, of which we are about to speak; except that no special verdict can be here given (*u*), because the lords of parliament,—or the lord high steward, if the trial be had in his court,—are judges sufficiently competent of the law that may arise from the fact: and except, also, that the peers need not all agree in their verdict: but the greater number, consisting of twelve at the least, will conclude and bind the minority (*x*).

V. The trial by jury, or the country, *per patriam*, is also that trial by the peers of every Englishman, which,

(*r*) 4 Bl. Com. 348.

(*s*) The case referred to in the text is that of Ashford *v.* Thornton, reported in 1 Barn. & Ald. 405.

(*t*) Vide sup. pp. 299, 302.

(*u*) Hatt. 116.

(*x*) Kelynge, 56; stat. 7 Will. 3, c. 3, s. 11; Foster, 247.

[as the grand bulwark of his liberties, is secured to him by the Great Charter: "*nullus liber homo capiatur, vel imprisonetur, aut exulet, aut aliquo alio modo destruatur, nisi per legale judicium parium suorum, vel per legem terræ*" (*y*).

The excellence of this method of trial holds still stronger in criminal than in civil cases: since, in times of difficulty and danger, more is to be apprehended from the violence and partiality of judges appointed by the Crown, in suits between the Sovereign and the subject, than in disputes between one individual and another, to settle the metes and boundaries of private property. Our law has, therefore, wisely placed this strong and two-fold barrier, of a presentment and a trial by jury, between the liberties of the people and the prerogative of the Crown. It was necessary, for preserving the admirable balance of our constitution, to vest the executive power of the laws in the prince: and yet this power might be dangerous and destructive to that very constitution, if exerted, without check or control, by justices of *oyer* and *terminer* occasionally named by the Crown; who might then imprison, dispatch, or exile any man that was obnoxious to the government, by an instant declaration that such is their will and pleasure. But the founders of the English law have with excellent forecast contrived, that no man should be called to answer to the Crown for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow-subjects, the grand jury (*z*);

(*y*) 9 Hen. 3, c. 29.

(*z*) These remarks from Blackstone (vol. iv. p. 359) are as true now as when they were written; but it is to be observed that the preparatory presentment of a grand jury is required (as the general rule) in all charges of felony, whether capital or otherwise; though as certain of the offences which by 24 & 25 Vict. cc. 96, 97 (vide sup. p. 330), are confided to the summary jurisdiction of the justices of the peace, are felonious, these may be considered as exceptions. On the other hand the modern provisions under which the felonious offence of larceny may, in certain cases, be so disposed of, are no innovation on the principle mentioned in the text,

[and that the truth of every accusation, whether preferred in the shape of indictment or information, should afterwards be brought to trial and confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen, and superior to all suspicion.

What has been already said of juries in general, and the trial thereby in *civil* cases, will greatly shorten our present remarks with regard to the trial of *criminal* suits, indictments and informations. Which trial we shall consider in the same method that we did the former,—by following the order and course of the proceedings themselves, as the most clear and perspicuous way of treating it.]

When, therefore, a prisoner has pleaded *not guilty* to the indictment or information, the next step is to impanel and swear for that purpose a jury,—called, (when intended to distinguish them from a grand jury,) a *petty* jury,—consisting of twelve persons, who must be of the same county where the indictment was found (*a*); and whose qualification, in other respects, is the same as that of jurors in civil causes. But it is a rule that no person who was of the grand jury by which the bill was found, is competent to sit upon the petty jury (*b*). If the proceedings are before the Queen's Bench, an interval after the plea elapses before the trial; during which, process issues for summoning a jury, as in civil causes: and the trial is either at bar (*c*) or at *nisi prius*, as mentioned in a former place (*d*). But if the proceedings and trial are in a court of oyer and terminer and general gaol delivery, the sheriff, (by virtue of a general precept, directed to him beforehand by the judges of assize,)

inasmuch as the *consent* of the person charged,—or, in the case of a juvenile offender, of his parents or guardians,—must be given before such course may be taken (vide sup. pp. 333, 334).

(*a*) 2 Hale, P. C. 264; Hawk. P. C. b. 2, c. 40. As to the finding of the indictment, vide sup. p. 361.

(*b*) 25 Edw. 3, st. 5, c. 3.

(*c*) On an information *ex officio*, the attorney-general is entitled to demand a trial at bar, if he thinks proper. (1 Chit. Cr. L. 848.)

(*d*) Vide sup. p. 308.

returns to such court, a panel of at least forty-eight jurors, to try all issues, whether criminal or civil, at that session: and therefore it is in such courts usual to try all persons charged with felony immediately or soon after their arraignment(*e*). And a similar practice—both as to the summoning jurors and as to the time of trial after arraignment—prevails in the case of such persons as are tried at the sessions of the peace. As to *misdemeanors* at the assizes or sessions, it was formerly not customary, (unless by consent of parties, or where the defendant was actually in gaol,) to try persons indicted thereof, at the same sessions in which they had pleaded *not guilty* to the indictment. It is now, however, provided by 14 & 15 Vict. c. 100, s. 27, that no person prosecuted, shall be entitled to *traverse* (that is, postpone) the trial of any indictment found against him at any session of the peace, of oyer and terminer, or of gaol delivery (*f*); but that if the court,—upon the application of such person or otherwise,—shall be of opinion that he ought to be allowed a further time, either to prepare his defence or otherwise, such court may adjourn the trial to the next subsequent session, on such terms as to bail or otherwise, as shall seem meet; and may respite the recognizances of the prosecutor's witnesses accordingly. In misdemeanors, also, where the record is in the Queen's Bench, we may remark, that the trial may, by leave of the court, be by a *special* jury; but this is not allowed in misdemeanors tried under commissions of oyer and terminer and gaol delivery, or at the sessions of the peace;

(*e*) 2 Hale, P. C. 263; 2 Arch. Just. 18. And see 6 Geo. 4, c. 50, s. 13; 7 Geo. 4, c. 64, s. 21; 15 & 16 Vict. c. 76, s. 105.

(*f*) To *traverse* properly signifies to plead in denial, and, therefore, in every case, a party who pleads not guilty to an indictment must also be said to traverse the indictment; but the meaning of the statute is, that his traverse shall not entitle him to a postponement. In the practice of the criminal courts, the word has been ordinarily thus used in connection with a postponement of the trial.

nor is a special jury ever allowed in cases of treason or felony.

In connection with the subject of trial, we may remark here, that in the case of treason generally, (but with the exception of an attempt to assassinate the sovereign,) it is enacted by statute 7 Will. III. c. 3, that no person shall be tried for the same, or for any misprision thereof, unless the indictment be found within three years after the offence committed; and that the prisoner shall have the same compulsory process to bring in his witnesses *for* him, as was usual to compel their appearance *against* him. And by statutes of 7 Anne, c. 21, and 6 Geo. IV. c. 50, s. 21, the prisoner is in general entitled,—in case of treason and misprision thereof,—to have a copy of the indictment, and a list of the witnesses to be produced against him and of the jurors, delivered to him ten days before the trial (*l*). But by 5 & 6 Vict. c. 51 (*m*), it is provided, that in all cases of treason in compassing or imagining any bodily harm tending to the death or destruction, maiming or wounding, of the Queen, (and in all cases of misprision of any such treason,) where the overt act or acts shall be an attempt to injure in any manner the person of the Queen,—the person charged shall be indicted, arraigned, tried, and attainted in the same manner and according to the same course and order of trial in every respect, and upon the like evidence, as

(*l*) See R. *v.* Frost, 2 Mood. C. C. 140. In all felonies (treason and misprision thereof excepted), the allowance of a copy of the indictment, and a list of the witnesses, is in the discretion of the court; though, in practice, they are always allowed both in the case of felonies and misdemeanors. (1 Chit. Cr. L. 403.) But in the case of prosecutions for misdemeanors instituted by the attorney or solicitor-general, such copy and list are expressly required by 60 Geo. 3 & 1 Geo. 4, c. 4, s. 8, to be given to the party prosecuted, free of expense, on his application. As to the right of the accused person to have copies of the *depositions* taken, vide sup. p. 358.

(*m*) Vide sup. p. 166. See also 39 & 40 Geo. 3, c. 93.

if he stood charged with murder; and that no indictment for such treason, shall be within any of the provisions of the said several Acts of 7 Will. III., 7 Anne, or 6 Geo. IV. touching trials in cases of treason and misprision thereof: but that, on conviction upon such indictment, judgment shall nevertheless be given, and execution done, as in other cases of treason.

When the trial is called on, the jurors are to be sworn, as they appear, to the number of twelve; unless they are challenged by the party (*n*).

Challenges may be made, either on the part of the Crown, or that of the prisoner; and either to the whole array or to the separate polls; for the very same reasons that they may be made in civil cases. For it is here at least as necessary, as in those, that the sheriff or returning officer be totally indifferent; and that the particular jurors should be *omni exceptione majores;* not liable to objection either *propter honoris respectum, propter defectum, propter affectum* or *proper delictum* (*o*). It may be observed here that, the privilege formerly allowed to aliens in civil, as well as criminal cases, of challenging the array, on the ground that the sheriff has not returned a jury *de medietate linguæ*—that is, a jury one-half of which consisted of aliens, supposing so many to be found in the place,—though preserved by the express enactment of 6 Geo. IV. c. 50, s. 47, in favour of persons indicted for felony or misdemeanor (*p*); has recently been taken away by the Naturalization Act, 1870, it being enacted by that statute

(*n*) By 30 & 31 Vict. c. 35, s. 8, a juror, who shall refuse or be unwilling from alleged conscientious motives to be sworn, may be permitted by the court, on being satisfied of the sincerity of such objection, to make solemn affirmation or declaration instead.

(*o*) By 6 Geo. 4, c. 50, s. 50, no man shall serve on a jury for the trial of a capital offence, who shall not be qualified as a juror in civil causes within the same county, city or place.

(*p*) This Act repeals (s. 62) the former statutes on this subject, viz. 27 Edw. 3, st. 2, c. 8; 28 Edw. 3, c. 13, and 8 Hen. 6, c. 29. This privilege of aliens, we may remark here, was taken away in *treason*, by 1 & 2 P. & M. c. 10.

that after its date an alien shall not be entitled to be tried by a jury *de medietate linguæ*, but shall be triable in the same manner as if he were a natural-born subject (*q*).

[Challenges upon any of the foregoing accounts, are styled challenges *for cause;* which may be without stint in both criminal and civil trials (*r*). But in criminal cases, or at least in cases of felony (*s*), there is allowed to the prisoner an arbitrary and capricious species of challenge to a certain numbers of jurors, without showing any cause at all,—which is called a *peremptory* challenge; a provision full of that tenderness and humanity to prisoners, for which our English laws are justly famous. This is grounded on two reasons: 1. As every man must be sensible, what sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another; and how necessary it is that a prisoner, when put to his defence, should have a good opinion of his jury,—the want of which might totally disconcert him,—the law wills not that he should be tried by any one man against whom he has conceived a prejudice, even without being able to assign a reason for such his dislike. 2. Because, upon challenges for cause shown, if the reason assigned prove insufficient to set aside the juror, perhaps the bare questioning his indifference may sometimes provoke a resentment; to prevent all ill consequences from which, the prisoner is still at liberty, if he pleases, to set him peremptorily aside.]

This privilege of peremptory challenges, though granted to the prisoner, is denied to the Crown by 6 Geo. IV. c. 50, s. 29; which, (repealing and re-enacting the former

(*q*) 33 & 34 Vict. c. 14, s. 5.

(*r*) Besides these challenges by the parties, the court itself is empowered to amend or enlarge the panels of jurors, by taking out the names of individuals and inserting others where necessary. (6 Geo. 4, c. 50, s. 20.) This Act, by sect. 62, repeals the former Act of 3 Hen. 8, c. 12, on the same subject.

(*s*) Blackstone says that a peremptory challenge is allowed in "capital" felonies, *in favorem vitæ*. (4 Bl. Com. 353.) But the practice extends to all *felonies*, though not to misdemeanors. (Co. Litt. 156 b.)

Act of 33 Edw. I. st. 4, on the same subject,) provides that the king shall challenge no jurors without assigning a cause certain, to be tried and approved by the court. [However, it is held that the king need not assign his cause of challenge till all the panel is gone through; nor unless there cannot be a full jury without the persons so challenged (*t*). And then, and not sooner, the counsel for the Crown must show cause, otherwise the juror shall be sworn (*u*).

The peremptory challenges of the prisoner must, however, have some reasonable boundary, otherwise he might never be tried. This reasonable boundary was settled by the common law to be the number of thirty-five: that is, one under the number of three full juries (*x*). For the law judged that five-and-thirty were fully sufficient to allow the most timorous man to challenge through mere caprice; and that he who peremptorily challenged a greater number, or three full juries, had no intention to be tried at all.] And so the law still stands in treason (*y*), except in the case of an attempt to injure the person of the Queen (*z*). But by 6 Geo. IV. c. 50, s. 29 (repealing

(*t*) In the case of Mansell *v.* The Queen (in error), 8 Ell. & Bl. 54, the law, as here laid down by Blackstone, in vol. iv. p. 353, was confirmed;—the court of Queen's Bench observing, that neither by 33 Edw. 1, st. 4, nor by 6 Geo. 4, c. 50, was there any intention to take away "all power of peremptory challenge from the Crown, "&c., and the course has invariably "been to permit the Crown to "challenge without cause, till the "panel has been called over and "exhausted, and then to call over "the names of the jurors peremptorily challenged by the Crown, "and put the Crown to assign cause, "so that if twelve of those upon "the panel remain, as to whom no "just cause of exception can be "assigned, the trial may proceed," &c.

(*u*) Hawk. P. C. b. 2, c. 43, s. 3; 2 Hale, P. C. 271. And the practice is the same both in trials for misdemeanors and for capital offences. (3 Harg. St. Tr. 519.)

(*x*) 2 Hale, P. C. 269.

(*y*) This is by the effect of 1 & 2 P. & M. c. 10, s. 7. (See Hawk. ubi sup. sect. 8.) As to the number of challenges allowed in misprision of treason generally, it seems doubtful. (Hawk. ubi sup. sect. 5.)

(*z*) By 5 & 6 Vict. c. 51, there is to be in this case "the same course and order of trial in every respect" as in a charge of murder (vide sup. p. 166).

and re-enacting the former provision of 22 Hen. VIII. c. 14, on the same subject),—no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of twenty. And by 7 & 8 Geo. IV. c. 28, s. 3, if any person indicted for treason, felony, or piracy, shall challenge peremptorily a greater number of the jury than such person is entitled by law to challenge in any of the said cases; every such peremptory challenge beyond the number allowed by law, shall be entirely void: and the trial of such person shall proceed, as if no such challenge had been made.

If, by reason of challenges or the default of the jurors, a sufficient number cannot be had of the original panel, a *tales* may be awarded, as in civil cases; supposing the prosecution to be in the Queen's Bench. But if it be under a commission of gaol delivery, the course is for the court to order, *ore tenus*, a new panel to be returned *instanter* (*a*). When at last the proper number, free from all exception, are obtained, they are sworn; and the form of oath in cases of felony, or wherever the defendant appears in person, is as follows: "You shall well "and truly try, and true deliverance make, between our "sovereign lady the Queen, and the prisoner whom you "have in charge: and a true verdict give according to "the evidence. So help you God" (*b*).

When the jury is sworn, if it be a cause of any consequence, the indictment is usually opened, and the evidence marshalled, examined, and enforced, by the counsel for the Crown or prosecution. And it was once the rule, that no counsel should be allowed a prisoner upon his trial upon the general issue, on any charge of felony, (though it was otherwise in an indictment for a misdemeanor,) unless some point of law should arise proper to be debated (*c*): though the judges made no

(*a*) 4 Inst. 168; 4 St. Tr. 728.
(*b*) Vide sup. p. 421, n. (*n*).
(*c*) Sir E. Coke (3 Inst. 137) gives this reason for excluding counsel for the prisoner, "because "the evidence to convict a pri-

scruple to allow a prisoner's counsel to instruct him what questions to ask, or even to ask questions for him with respect to matters of fact: and, as to matters of law considered the prisoner as *entitled* to the assistance of counsel (*d*). And by 7 Will. III. c. 3, it was provided in the case of treason generally, that he might make defence by counsel not exceeding two; and the same indulgence was by 20 Geo. II. c. 30, extended to *parliamentary impeachments* for treason; which were excepted in the former Act. But the law on this subject is now governed by 6 & 7 Will. IV. c. 114, which put aside the antient rule altogether; and provided, that all persons tried for felonies should be admitted, after the close of the case for the prosecution, to make full answer or defence by counsel; or, in courts where attornies practise as counsel, by attorney.

Until a recent period, the law of evidence and practice in proceedings in courts of criminal judicature, and in trials at nisi prius, though the same in most respects yet differed in others; but with the view of assimilating them as far as possible it has been now enacted by 28 & 29 Vict. c. 18, that (if any prisoner or defendant on

" soner should be so manifest as it " cannot be contradicted." And Lord Nottingham, when high steward, declared (3 St. Tr. 726), that this was the only good reason that could be given for it. Such exclusion, however, was strongly disapproved by Blackstone; who remarks (vol. iv. p. 355), that however it might be palliated under cover of that noble declaration of the law, that the judge shall be counsel for the prisoner, it is not at all of a piece with the rest of the "humane " treatment of prisoners by the Eng- " lish law." And he adds, on the authority of the Mirrour (c. 3, s. 1), that counsel were allowed under the more antient common law.

Father Parsons, the Jesuit, and, after him, Bishop Ellys, (Of English Liberty, vol. ii. p. 66,) have imagined, that the benefit of counsel to plead for them was first denied to prisoners by a law of Henry the first; meaning, apparently, chapters 47 and 48 of the code which is usually attributed to that prince; but it may be doubted if the expression *uti consilio* there cited refers to the right to have counsel in court.

(*d*) 4 Bl. Com. p. 356.

his trial for felony or misdemeanor shall be defended by counsel, but not otherwise,) it shall be the duty of the presiding judge, at the close of the case for the prosecution, to ask the counsel for the defence whether he intends to adduce evidence; and in the event of his not thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner; and upon every trial for felony or misdemeanor, whether defended by counsel or not, such prisoner or defendant or his counsel shall be allowed, if he shall think fit, to open his case; and after the conclusion of such opening, such prisoner or defendant or his counsel shall be entitled to examine such witnesses as he may think fit, and, when all the evidence is concluded, to sum up the evidence.

There are, however, still some points wherein a difference between civil and criminal evidence will be found to exist; and among these are the following (*f*):—

First, in all cases of treason and misprision of treason, —by statutes 1 Edw. VI. c. 12; 5 & 6 Edw. VI. c. 11, and 7 Will. III. c. 3,—*two* lawful witnesses are required to convict a prisoner; unless he shall willingly and without violence *confess* the same (*g*). [And, by the last-mentioned statute, it is declared, that both witnesses must be to the same overt act of treason; or one to one overt act, and the other to another overt act of the same species of treason, and not of distinct heads or kinds: and that no

(*f*) Besides the differences which here follow, it is to be remarked that some of the rules of evidence introduced by 17 & 18 Vict. c. 125, (The Common Law Procedure Act, 1854,) do not apply to criminal, but only to civil cases. One of these, however, viz. 17 & 18 Vict. c. 125, s. 20, permitting any person called as a witness and unwilling from conscientious motives to be sworn, to make affirmation instead, was subsequently by 24 & 25 Vict. c. 66, extended to criminal proceedings. See also 32 & 33 Vict. c. 68, s. 4, cited sup. vol. III. p. 535.

(*g*) 4 Bl. Com. p. 356.

[evidence shall be admitted to prove any overt act, not expressly laid in the indictment (*h*). And therefore in Sir John Fenwick's case, in King William's time, (where there was but one witness,) an Act of Parliament was made on purpose to attaint him of treason (*i*); and he was executed thereon (*j*).] Again, in prosecutions for perjury, there can be no conviction except on the oath of two witnesses: though it will be sufficient that the perjury be directly proved by one witness; and that corroborative evidence, on some particular point, be given by another (*k*); and where the alleged perjury consists in the defendant's having contradicted what he himself swore on a former occasion, the testimony of a single witness in support of the defendant's own original statement will support a conviction (*l*). [But, in almost every other accusation, the oath of one positive witness will be sufficient: the exception in case of treason, being allowed in order to secure the subject more effectually from false accusation in a case so penal, and where there may be danger of his being made the victim of political oppression: in the case of perjury, because it would not be reasonable to convict, where there is only one oath against another (*m*).]

Secondly, a confession of his guilt by the defendant, is

(*h*) See St. Tr. vol. ii. p. 144; Foster, 235.

(*i*) Stat. 8 Will. 3, c. 4.

(*j*) St. Tr. vol. xi.

(*k*) See R. *v.* Mayhew, 6 Car. & P. 315; R. *v.* Parker, 1 Car. & M. 639; The Queen *v.* Hook, 27 L. J. (M. C.) 222.

(*l*) R. *v.* Harris, 5 B. & Ald. 929.

(*m*) 4 Bl. Com. 357; see R. *v.* Muscot, 10 Mod. 194; Champney's case, 2 Lewin, C. C. 258. Montesquieu lays it down, (Sp. L. b. 12, c. 3), that those laws which condemn a man to death, *in any case*, on the deposition of a single witness, are fatal to liberty; and he adds this reason,—that the witness who affirms, and the accused who denies, make an equal balance; and that there is a necessity, therefore, to call in a third man to incline the scale. "But this," says Blackstone (vol. iv. p. 357), "seems to be carrying matters too far; for there "are some crimes in which the very "privacy of their nature excludes "the possibility of having more "than one witness. Neither, in-"deed," he adds, "is the bare denial "of the person accused, equivalent "to the positive oath of a disin-"terested witness."

in general sufficient to support a conviction. But this is only on the supposition that it is freely and voluntarily made; for otherwise, it is not even admissible in evidence (*n*). If drawn from him, therefore, by means of any threat or promise, it cannot, in general, be received (*o*); and it is in no case evidence, except against himself (*p*). It is also a rule that if any part of a confession is used to establish the case on the part of the prosecution, the whole of it must be given in evidence; though the jury are at liberty to believe those parts which make against the defendant, and to disbelieve what he alleges in his own favour (*q*).

Thirdly, in a former volume it was mentioned, that, by a recent alteration of the law, the infamous character of the witnesses, or their being interested in the testimony they are about to give, does not now prevent their being examined, but affects only their credibility; and that the *parties* even to the cause are now made both competent and compellable (as the general rule) to give evidence (*r*). But this change does not operate so as to allow of the examination, at the time of his trial (*s*), of any person charged with any *offence*, whether indictable or punishable by way of summary conviction (*t*).

(*n*) See Parker *v.* Green, 2 B. & Smith, 299.

(*o*) See Reg. *v.* Luckhurst, 1 Dearsley's C. C. R. 245; R. *v.* Sleeman, ibid. 249.

(*p*) See also 7 Geo. 4, c. 64, by which provisions were previously made on the same subject, and which 11 & 12 Vict. c. 42, only repeals in part.

(*q*) R. *v.* Clewes, 4 Car. & P. 221.

(*r*) As to proof of the previous conviction of a witness for crime, see 28 & 29 Vict. c. 18, s. 6; 34 & 35 Vict. c. 112, s. 18.

(*s*) As to the statement, however, of a defendant, made on his being charged before a magistrate,—it will be remembered that when he makes the same *after being duly cautioned*, it is expressly provided by 11 & 12 Vict. c. 42, s. 18, that what he says may be given in evidence against him upon his trial. (Vide sup. p. 355.) See also an exception in the case of *gaming-houses*, noticed sup. p. 274.

(*t*) See Parker *v.* Green, 2 B. & Smith, 299. But a defendant in a criminal suit promoted against him under the Church Discipline Act (3 & 4 Vict. c. 86) may be ex-

Fourthly, the deposition or statement on oath of witnesses before magistrates, duly taken according to the provisions either of 11 & 12 Vict. c. 42, s. 17, or of 30 & 31 Vict. c. 35, s. 6,—may be produced at the trial, and given in evidence for or against the defendant, if the party who made the same be dead, too ill to travel, insane, or kept away by the prisoner; or may be given in contradiction of the evidence of the deponent, if called as a witness at the trial itself (*u*).

Fifthly, though, by the general rule of law, all hearsay,—that is, any statement by a witness of what has been said or declared out of court,—is excluded; yet on a charge of homicide, it is the practice to admit testimony as to the dying declarations of the deceased, with respect to the cause of his death,—that is, if made under a sense of approaching dissolution (*x*).

Sixthly, though by 16 & 17 Vict. c. 83, the husband or wife of any party to a legal proceeding, is now in most civil cases competent and compellable to give evidence on behalf of either or any of the parties, yet it is also thereby expressly provided that this is not to extend to compel or enable a husband to give evidence for or against his wife, or a wife to give evidence for or against her husband, in any *criminal* proceeding. Such evidence therefore remains inadmissible, as it always was by the common law. Yet this rule is open to certain exceptions. Thus, in treason, a wife may give evidence against her husband, because the tie of allegiance is paramount to all others.

amined. See Bishop of Norwich *v.* Pearse, Law Rep., 2 Ad. & Ecc. Ca. 281.

(*u*) See R. *v.* Scaife and others, 20 L. J. (M. C.) 229; Queen *v.* Upton, St. Leonard's, 10 Q. B. 827; Queen *v.* Clements, 30 L. J. (M. C.) 193; Reg. *v.* Beeston, 1 Dearsley's C. C. R. 405; The Queen *v.* Cockburn, 26 L. J. (M. C.) 136; Austin's case (per Willes, J.), 1 Dearsley's C. C. R. 612.

(*x*) See as to dying declarations, R. *v.* Moseley, 1 R. & M. C. C. R. 97; R. *v.* Hayward, 6 Car. & P. 157; R. *v.* Perkins, 9 Car. & P. 395; R. *v.* Scaife, 1 M. & Rob. 551; The Queen *v.* Reany, 26 L. J. (M. C.), 43; The Queen *v.* Hind, 29 L. J. (M. C.) 147.

So upon a charge of forcible abduction and marriage, or other violence to her person, the woman is a competent witness against her husband (*a*).

[Seventhly, it was an antient and commonly received practice (*b*),—derived from the civil law, and which also has obtained in France (*c*),—that as counsel was not formerly allowed to any prisoner accused of a felony, so neither should he be suffered to exculpate himself therefrom by the testimony of any witnesses. And therefore it deserves to be remembered to the honour of Mary the first, (whose early sentiments, till her marriage with Philip of Spain, seem to have been humane and generous,) that when she appointed Sir Richard Morgan chief justice of the Common Pleas, she enjoined him, "that notwithstanding the "old error, which did not admit any witnesses to speak, "or any other matter to be heard, in favour of the ad- "versary, her majesty being party;—her highness's "pleasure was, that whatsoever could be brought in "favour of the subject, should be admitted to be heard; "and moreover, that the justices should not persuade "themselves to sit in judgment otherwise for her highness "than for her subjects" (*d*). Afterwards, in one particular instance,—when embezzling the royal stores was made a capital felony (*e*),—it was provided by statute, that any person impeached for such felony "should "be received and admitted to make any lawful proof "that he could, by lawful witness or otherwise, for his "discharge and defence:" and, in general, the courts grew so heartily ashamed of a doctrine so unreasonable and oppressive, that a practice was gradually introduced of examining witnesses for the prisoner, though not upon

(*a*) 1 Chit. Bl. 444, n.; 1 Phil. Ev. 71; Lord Audley's case, 3 St. Tr. 402.

(*b*) St. Tr. i. *passim*.

(*c*) Domat, Pub. Law, b. 3, tr. 1; Montesq. Sp. L. b. 39, c. 11.

(*d*) Hollingsh. 1112; St. Tr. i. 72.

(*e*) This was by 31 Eliz. c. 4, a statute repealed by 7 & 8 Geo. 4, c. 27. As to the existing provision with regard to this offence, vide sup. p. 130.

[oath (*f*): the consequence of which still was, that the jury gave less credit to the prisoner's evidence, than to that produced by the Crown. Sir Edward Coke protests very strongly against this tyrannical practice; declaring, that he never read, in any Act of parliament, book-case, or record, that in criminal cases the party accused should not have witnesses sworn for him; and that therefore there was not so much as *scintilla juris* against it (*g*). And the house of commons were so sensible of this absurdity, that, in the bill for abolishing hostilities between England and Scotland, (when felonies committed by Englishmen in Scotland were ordered to be tried in one of the three northern counties,) they insisted on a clause, and carried it against the efforts of both the Crown and the house of lords, against the practice of the courts in England, and the express law of Scotland, "that in all such trials, for the better "discovery of the truth, and the better information of "the consciences of the jury and justices, there shall be "allowed to the party arraigned the benefit of such "credible witnesses, to be examined upon oath, as can "be produced for his clearing and justification" (*h*). At length by the statute 7 Will. III. c. 3, the same measure of justice was established throughout all the realm, in cases of treason causing any corruption of blood, and of misprision thereof: and it was afterwards declared, by statute 1 Anne, st. 2, c. 9, that in all cases of treason and felony, all witnesses for the prisoner should be examined upon oath, in like manner as the witnesses against him (*i*).] And now, there is no distinction in

(*f*) 2 Bulst. 147; Cro. Car. 292.

(*g*) 3 Inst. 79. See also 2 Hale, P. C. 283, and his Summary, 264.

(*h*) Stat. 4 Jac. 1, c. 1. See Com. Journ. 4, 5, 12, 13, 15, 29, 30 Jun. 1607.

(*i*) Provisions have been recently made (vide sup. p. 355) to afford facilities to persons accused of indictable offences before they are committed or bailed to have the depositions taken of such persons as they may desire to call as witnesses; and for the payment of their expenses, if allowed by the court at the trial.

this matter between civil and criminal proceedings. In all cases, every witness who is examined in a court of justice must give his evidence under the sanction of an oath, or of some affirmation allowed in substitution of an oath.

Lastly, the defendant in a criminal prosecution is allowed to call witnesses to speak, generally, to his character: though he is not allowed to prove particular actions bearing favourably on his character; unless they happen to stand in connection with some of the facts charged and proved against him (*m*). And here we may take occasion to notice certain legislative provisions in reference to the previous character of the accused. For by 24 & 25 Vict. cc. 96, 99 (*n*), it is provided that in an indictment under those Acts, alleging the offence to have been committed after a previous conviction, the defendant shall, in the first instance, be arraigned upon so much of the indictment as charges the subsequent offence, concerning which only the jury shall, in the first instance, be charged to inquire; and that if they shall find him guilty thereof, or if on arraignment he shall plead guilty to the subsequent offence, then, and not before, the previous conviction shall be inquired into. But there is an exception as to this, if the prisoner gives evidence as to character: for in that case the prosecutor may, in answer thereto, give evidence of the previous conviction before the subsequent offence is found: and the jury shall then inquire of the previous conviction and of the subsequent offence, at the same time (*o*). Moreover, it forms one of the provisions of the Prevention of Crimes

(*m*) As to evidence to contradict evidence to character, see R. *v.* Rowton, 34 L. J. (M. C.) 57.

(*n*) There is a previous statute on this subject to the same general effect, viz. 6 & 7 Will. 4, c. 111.

(*o*) 24 & 25 Vict. c. 96, s. 116, and c. 99, s. 37. Some doubt appears to be entertained whether this practice is confined to offences under these Acts, or is general. See Arch. Pl. & Ev. 15th ed. p. 831; The Criminal Law Acts, by Greaves, p. 203.

Act, 1871 (34 & 35 Vict. c. 112), s. 18, that a previous conviction may be proved by producing a record or extract of such conviction; and by giving proof of the identity of the person against whom the conviction is sought to be proved, with the person appearing in the record or extract of conviction to have been convicted.

[When the evidence on both sides is closed,—and indeed when any evidence hath been given,—the jury cannot be discharged, (unless in cases of evident necessity,) till they have given in their verdict (*p*): but are to consider of it, and deliver it in, with the same forms as upon civil causes. But the judges may adjourn, while the jury are withdrawn to confer, and return to receive the verdict in open court (*q*).] And when the trial runs to such a length, that it cannot be concluded in one day, the established practice now is to adjourn the court till the next morning; but the jury must be kept somewhere together, so that they may have no communication except with each other (*r*). [Such verdict may be either general, as "guilty" or "not guilty;" or special, setting forth all the circumstances of the case, and praying the judgment of the court (*s*); whether, for instance, on the facts stated, it be murder, manslaughter, or no crime at all. This is where they doubt the matter of law, and therefore choose to leave it to the determination of the court; though they have an unquestionable right of determining upon all the circumstances, and finding a general verdict,—if they think proper so to hazard a

(*p*) Co. Litt. 227; 3 Inst. 110; Foster, 27; Gould's case, Hil. T. 1764. See the Queen *v.* Charlesworth, 1 B. & Smith, 460. The discretion of a judge with regard to the discharge of a jury before verdict cannot be considered in a court of error. (Winsor *v.* The Queen, Law Rep., 1 Q. B. 289; S. C. in error, ib. 390.)

(*q*) 3 St. Tr. 731; 4 St. Tr. 231, 455, 485.

(*r*) Stone's case, 6 T. R. 527; 1 Chit. C. L. 632.

(*s*) See an example of a special verdict, in an indictment for a nuisance, R. *v.* Tindall, 6 A. & E. 143.

[breach of their oaths. But the practice some time in use, of fining, imprisoning, or otherwise punishing jurors, for finding their verdict contrary to the direction of the judge, was arbitrary, unconstitutional, and illegal. And it is treated as such, by Sir Thomas Smith, two hundred years ago; who accounted such doings "to be very violent, "tyrannical, and contrary to the liberty and custom of "the realm of England" (*u*). For, as Sir Matthew Hale well observes, it would be a most unhappy case for the judge himself, if the prisoner's fate depended upon his directions: unhappy also for the prisoner; for, if the judge's opinion must rule the verdict, the trial by jury would be useless (*x*). Yet, in many instances, where contrary to evidence the jury have found the prisoner guilty, their verdict hath been mercifully set aside; and a new trial granted by the Queen's Bench (*y*). But there hath yet been no instance of granting a new trial, where the prisoner was found *not* guilty on the first (*z*).

If the jury therefore find the prisoner not guilty, he is then for ever quit and discharged of the accusation (*a*). And upon such his *acquittal*,—or upon his discharge for want of prosecution, or upon the bill of indictment not being found by the grand jury (*b*),—he shall be immediately set at large, without payment of any fee to the

(*u*) Smith's Commonw. l. 3, c. 1.

(*x*) 2 Hale, P. C. 313.

(*y*) The cases of new trial in the books are all of *misdemeanor* (see R. *v.* Read, 1 Lev. 9; St. Tr. x. 416; R. *v.* Whitehouse, 1 Dearsley, C. C. 1; R. *v.* Manby, 6 T. R. 619; R. *v.* Oxford, 13 East, 410, 415). The only case in which a new trial has been granted after verdict in a case of *felony* appears to be R. *v.* Scaife and others, 17 Q. B. 238; 2 Den. C. C. 286, in notis. But as to this case, see Reg. *v.* Bertrand, Law Rep., 1 App. Ca. P. C. 520; and Reg. *v.* Murphy, ib. 2 P. C. Ca. 535.

(*z*) Hawk. P. C. b. 2, c. 47, s. 11. However in cases of *misdemeanor* for nonfeasance and such as involve civil liability, though the proceeding is criminal in form, a new trial has been granted after a verdict of acquittal. See The Queen *v.* Russell, 3 Ell. & Bl. 942; The Queen *v.* Johnson, 2 Ell. & Ell. 613.

(*a*) The civil law in such case only discharged him from the same accuser, but not from the same accusation. (Ff. 48, 2, 7, s. 2.)

(*b*) Vide sup. p. 367.

[gaoler (*c*). But if the jury find him guilty, he is then said to be *convicted* of the crime whereof he stands indicted (*d*). Which conviction, therefore, may accrue two ways, either by his confessing the offence, and pleading guilty; or by his being found so by the verdict of his country.]

The present chapter shall conclude with noticing two circumstances collateral to the prosecution—first, the allowance of the expenses which have been incurred; and, secondly, in case of larceny, the restitution of the goods stolen.

1. And, first, by 7 Geo. IV. c. 64, s. 22 (*e*), the court before whom an indictment for any *felony* is preferred (*f*), is empowered to allow the expenses of the prosecutor and his witnesses (*g*),—with compensation for their trouble and loss of time (*h*), and this whether the case shall terminate in conviction or acquittal, or in the throwing out

(*c*) See 14 Geo. 3, c. 20; 55 Geo. 3, c. 50; 8 & 9 Vict. c. 114; R. *v.* Coles, 8 Q. B. 75.

(*d*) In the Roman republic, when the prisoner was convicted of any capital offence by his judges, the form of pronouncing that conviction was something particularly delicate; not that he was guilty, but that he had not been enough upon his guard: "*parum cavisse videtur.*" (Festus, 325.)

(*e*) This Act repeals the previous enactments contained in 27 Geo. 2, c. 3; 18 Geo. 3, c. 19; 58 Geo. 3, c. 70.

(*f*) See also 7 & 8 Vict. c. 2, s. 1, as to offences committed *on the high seas;* 17 & 18 Vict. c. 104, s. 267, as to offences by *British seamen;* 19 & 20 Vict. c. 16, s. 13; 25 & 26 Vict. c. 65, s. 12, as to prosecutions removed for trial to the *Central Criminal Court;* 32 & 33 Vict. c. 62, s. 17, as to the prosecution of *fraudulent debtors.*

(*g*) By 7 Geo. 4, c. 64, s. 28, and 14 & 15 Vict. c. 55, s. 8, the court may also order compensation to parties who have been active in the *apprehension* of certain offenders. (Vide sup. p. 352.)

(*h*) By 14 & 15 Vict. c. 55, s. 4, the amount of costs and expenses of the prosecutions, is placed under the superintendence of the secretary of state; and the costs, being charged in the first instance upon the county rate, (or in the case of a borough with a separate quarter sessions on the borough rate,) are repaid to the treasurer of the county (or borough) out of monies provided by parliament.

the bill of indictment (*i*): and by 10 & 11 Vict. c. 82, and 18 & 19 Vict. c. 126, similar powers are given to justices at petty sessions, dealing with offences under those Acts, in the exercise of their summary jurisdiction. And, though there is no general provision on this subject with regard to *misdemeanors*, the costs of prosecution are provided for in the same way, in reference to a great variety of cases, by the particular Act under which the misdemeanor is punishable (*k*). Moreover, by 29 & 30 Vict. c. 52, it is now further provided, that the justices before whom a prisoner is brought and examined (though no *committal for trial* shall take place thereon) may grant to any witness called and examined, a certificate of his expenses; which expenses are to be allowed out of the county rate: provided always the charge be made *bonâ fide* on reasonable and probable cause. And, finally, by 30 & 31 Vict. c. 35, s. 5, the court before which any person is tried for any felony or misdemeanor may, in its discretion, order that there shall be paid to any witness who was bound over by the examining magistrate to give evidence on behalf of the person accused, a sum of money in reasonable compensation for his expenses, trouble and loss of time, as part of the expenses of the prosecution (*l*).

(*i*) Even if no bill is preferred, the court before whom any person has been summoned to attend by recognizance or subpœna, may compensate him for expenses incurred and trouble and loss of time, either in attending such court or the examining justices. (7 Geo. 4, c. 64, s. 22.)

(*k*) See in particular the following enactments:—10 & 11 Vict. c. 82; 13 & 14 Vict. c. 101; 14 & 15 Vict. c. 55, s. 3; 19 & 20 Vict. c. 16, s. 13; 24 & 25 Vict. c. 96, s. 121; c. 97, s. 77; c. 98, s. 54; c. 99, s. 42; c. 100, s. 77.

(*l*) We may remark here, that costs are also, in other cases, sometimes allowed to *defendants* in criminal proceedings. For by 4 & 5 W. & M. c. 18, if the prosecutor, on an information filed by the Master of the Crown office, does not try within a year after issue joined, or if the defendant be acquitted by verdict, or a *nolle prosequi* be entered, the Queen's Bench may award costs to the defendant,—unless the judge before whom it is tried certifies in open court on the trial that there was a reasonable ground for the prosecution. See also 19 & 20

2. By the common law there was no restitution of goods upon an indictment, because it is at the suit of the Crown only; and therefore the party was enforced to bring an appeal of robbery, in order to have his goods again (*m*). But afterwards, by statute 21 Hen. VIII. c. 11, where any person was convicted of larceny by the evidence of the party robbed, such party was to have full restitution of his money, goods and chattels,—or the value of them out of the offender's goods, (if he had any,)—by a writ to be granted by the justices. And afterwards, it became the practice for the court, upon the conviction of a felon, to order, without any writ, immediate restitution of such goods as were brought into court, to be made to the several prosecutors (*n*). And though the statute of 21 Hen. VIII. is repealed (*o*), a writ or order of restitution may now, in many cases, be issued under the provision of 24 & 25 Vict. c. 96, s. 100 (*p*); which enacts that if any person, guilty of any felony or misdemeanor mentioned in that Act (*q*), in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving, any chattel, money, valuable security, or other property, shall be indicted for the same, by or on behalf of the owner, his executor or administrator, and be convicted thereof,—the property shall, in such case, be restored to the owner or such his representative; and the court shall have power to award, from time to time, writs

Vict. c. 16, ss. 25, 26; and 25 & 26 Vict. c. 65, s. 12, as to the expense of witnesses for prisoners, tried under those Acts.

(*m*) 3 Inst. 242. As to an appeal, vide sup. p. 378.

(*n*) There is no power, either at common law or by statute, for a judge to give any direction as to the disposal of chattels found on a felon, which do *not* belong to the prosecutor. See The Queen *v.* The Corporation of London, 1 Ell. Bl. & Ell. 509.

(*o*) By 7 & 8 Geo. 4, c. 27.

(*p*) Re-enacting 7 & 8 Geo. 4, c. 29. s. 57, repealed by 24 & 25 Vict. c. 95.

(*q*) An exception, however, is made with regard to prosecutions of *trustees*, *bankers* and other *agents* for misdemeanors under the Act, in respect of goods or documents of titles entrusted to them. (24 & 25 Vict. c. 96, s. 100.)

of restitution for such property, or to order the restitution thereof in a summary manner (*r*). This, however, is subject to a proviso as to valuable securities, that no restitution shall be awarded if before the award thereof it shall appear that they shall have been *bonâ fide* paid or discharged by some person liable to the payment thereof; —or, (being negotiable instruments,) shall have been *bonâ fide* taken by transfer or delivery, by some person for a just and valuable consideration;—provided, that is, such person had no notice or reasonable cause to suspect that they had been stolen, taken, obtained, extorted, embezzled, converted or disposed of by means of any felony or misdemeanor.

[It is to be observed with respect to restitution after conviction, that it reaches the goods so stolen, notwithstanding the property of them is endeavoured to be altered by sale in a market overt (*s*); a doctrine which, though it may seem somewhat hard on the buyer, yet the rule of law is, that *spoliatus debet, ante omnia, restitui:* especially when he has used all the diligence in his power to convict the felon. And since the case is reduced to this hard necessity, that either the owner or the buyer must suffer,

(*r*) The Queen's Bench has no power in such cases to award a writ or order restitution, which must be obtained from the court convicting the offender. (The Queen *v.* Lord Mayor of London, Law Rep., 4 Q. B. 371.) A similar power is given to the *justices of the peace*, on their summarily convicting a juvenile offender of larceny, under the provisions of 10 & 11 Vict. c. 82; 13 & 14 Vict. c. 37; or on their exercising the summary jurisdiction conferred on them in certain cases of larceny, by 18 & 19 Vict. c. 126.

(*s*) 1 Hale, P. C. 543; 4 Bl. Com. 363. Even without any award of restitution, the party may peaceably retake his goods wherever he happens to find them, unless a new property have been fairly acquired therein. And he may bring an action of trover against any one who has bought them, after he has prosecuted the thief to conviction. (Scattergood *v.* Sylvester, 15 Q. B. 506.) He may also bring an action against the felon after conviction, in case he receives a pardon. But such actions lie not before conviction; for so felonies would be made up and healed; and also recaption is unlawful, if done with intention to smother or compound the larceny. (4 Bl. Com. 363.) As to compounding felony, vide sup. p. 332.

[the law prefers the right of the owner,—who has done a meritorious act by pursuing a felon to condign punishment,—to the right of the buyer, whose merit is only negative, that he has been guilty of no unfair transaction.] In reference, however, to the above doctrine, notice may be taken of the following provision in the 30 & 31 Vict. c. 35, s. 9,—viz., that where a prisoner has been convicted of any offence which includes the stealing of any property, and it shall appear to the court that the prisoner has sold such property to one who had no knowledge that the same was stolen, it shall be lawful for the court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order a sum, not exceeding the proceeds of the sale, to be delivered to the purchaser out of any monies which may have been taken from the prisoner on his apprehension. Moreover, by the 33 & 34 Vict. c. 23, ss. 3, 4, the court is now enabled to condemn an offender, who has been convicted of treason or felony, (the same statute abolishing the former rule that on such conviction his property was forfeited to the crown,) to pay the costs of the suit; and also, on the application of any person aggrieved, a sum of money by way of compensation not exceeding 100*l.*

CHAPTER XXIII.

OF JUDGMENT AND ITS CONSEQUENCES.

WE are now to consider the next stage of criminal prosecutions after trial and conviction are past,—which is that of *judgment* (*a*). For when, upon a charge of felony, the jury have, in the presence of the prisoner, brought in their verdict, "guilty," he is either immediately, or at a convenient time soon after, asked by the court, if he has anything to offer why judgment should not be awarded against him. And, upon a charge of misdemeanor, in case the defendant be found guilty in his absence, (as he may be,) a *capias* is thereupon issued, to bring him in to receive his judgment; and, if he absconds, he may be prosecuted even to outlawry; but no corporal punishment can in any case be awarded against a defendant, unless he be personally present (*b*). But whenever he appears in person, he may at this period offer any exceptions to the indictment, in *arrest of judgment* (*c*): as for

(*a*) Vide sup. p. 344.

(*b*) Hawk. P. C. b. 2, c. 48, s. 17. The defendant must in all cases be personally before the court, in order to move in arrest of judgment. (Com. Dig. Indictment, N.) And to enable him so to move, he must, in capital cases, be asked, before judgment "what he has to say why "judgment of death should not be "pronounced against him." (Ibid.)

(*c*) At this period of the proceedings it was that the prisoner formerly might avoid a judgment of death, by praying the *benefit of clergy;* it being more usual to resort to this, after conviction, than by way of plea to the indictment (as to which, vide sup. p. 397, n.). This benefit of clergy constituted, in former times, so remarkable a feature in our criminal law, and a general acquaintance with its nature is still so important for the illustration of our books, that it may be desirable to subjoin here some fur-

some defect apparent on the face of the record; for it is to defects of that kind only, that the motion in arrest of judgment applies. Formerly, indeed, the judgment might be arrested for merely formal defects, as for want of sufficient certainty in setting forth the person, the time, or the place; but now, as we have seen, defects of a merely formal kind are, in some cases, wholly immaterial; and,

ther notice on the subject. It originally consisted, in the privilege allowed to a clerk in orders, when prosecuted in the temporal court, of being discharged from thence, and handed over to the Court Christian, in order to make canonical purgation,—that is, to clear himself on his own oath, and that of other persons as his compurgators, (see Hist. Eng. L. by Reeves, vol. 2, pp. 14, 134; 25 Edw. 3, st. 3, c. 4, et sup. bk. v. c. v.;) a privilege founded, as it is said, upon the text of Scripture, "Touch "not mine anointed, and do my "prophets no harm." In England, this was extended by degrees to all who could read, and so were capable of becoming clerks; and ultimately allowed by 5 Ann. c. 6, without reference to the ability to read. (Reeves, ubi sup., et vol. 4, p. 156; 2 Inst. 637; 1 Edw. 6, c. 12.) But by 4 Hen. 7, c. 13, it was provided, that laymen allowed their clergy should be burned in the hand, and should claim it only once; and as to the clergy,—it became the practice in cases of heinous and notorious guilt, to hand them over to the ordinary *absque purgatione faciendâ*, the effect of which was that they were to be imprisoned for life (4 Bl. Com. 369); although afterwards, by 18 Eliz. c. 7, the delivering over to the ordinary was abolished altogether. As to the nature of the offences to which the benefit of clergy applied, it had no application except in capital felonies; and from the more atrocious of these it had been taken away by various statutes, prior to its late entire abolition by 7 & 8 Geo. 4, c. 28, s. 6. As the law stood at the time of that abolition, clerks in orders were, by force of the benefit of clergy, discharged in clergyable felonies without any corporal punishment whatever, and as often as they offended (2 Hale, P. C. 375); the only penalty being a forfeiture of their goods. And the case was the same with peers and peeresses, as regards the first offence; and even after the 7 & 8 Geo. 4, c. 28, doubts were entertained whether the privilege of lords or peers in parliament in this respect did not still exist. This doubt led to the passing of 4 & 5 Vict. c. 22, enacting that, upon conviction for any felony, such persons shall be punishable as any other of her majesty's subjects. As to commoners, also, they could have benefit of clergy only for the first offence; and they were discharged by it from the capital punishment only,—being subject on the other hand, by 3 Geo. 1, c. 11, 6 Geo. 1, c. 23, and 19 Geo. 3, c. 74, not only to forfeiture of goods, but to burning in the hand, whipping (except in manslaughter), fine, and imprisonment, (or, in certain cases, transportation,) in lieu of the capital sentence. See 4 Bl. Com. p. 371.

in none are allowed to be brought forward, except by way of demurrer, or motion to quash the indictment (*d*): so that a motion in arrest of judgment can be now made only in respect of some substantial objection (*e*). Upon such motion, if the objection taken appear to be sufficient, the court will arrest the judgment; that is, abstain from pronouncing any judgment, and discharge the prisoner. But such a result is not, like an acquittal by verdict, an absolute discharge from the matter of accusation, for the party may be indicted again (*f*). By recent legislation, another method also is now provided for protecting a prisoner found guilty by verdict, from having judgment or execution awarded against him, where, in point of law, it ought not to be awarded; for, supposing the trial to be in a court of oyer and terminer, gaol delivery, or quarter sessions, and any question of law to arise on such trial on motion for arrest of judgment, (or even independently of such motion,) which it finds too difficult for its determination,—such court is now empowered by 11 & 12 Vict. c. 78, to *reserve* the question; and to state it in the form of a special case for the consideration of the judges; and in the meantime to postpone the judgment, or respite the execution of it, as may be thought fit (*g*).

A *pardon* may not only (as already mentioned) be pleaded on arraignment in bar of the indictment (*h*), but it may also be pleaded after verdict, in arrest of judgment. Yet, certainly, upon all accounts, when a man hath obtained a pardon, he is in the right to plead it as soon as possible.

(*d*) Vide sup. p. 400.

(*e*) See Larkin's case, 1 Dears. C. C. R. 365.

(*f*) See 4 Rep. 45.

(*g*) It forms one of the provisions of the Supreme Court of Judicature Act, 1873, that after the commencement of that Act in November, 1874, this jurisdiction as to reserved cases shall be exercised by the judges of the "High Court of Justice," or by five of them at the least, whereof the "Lord Chief Justice of England," or the "Lord Chief Justice of the Common Pleas," or the "Lord Chief Baron of the Exchequer," shall be one (36 & 37 Vict. c. 66, s. 47).

(*h*) Vide sup. p. 404.

If all these resources fail, the court must pronounce *judgment;* by awarding the punishment which the law hath annexed to the crime; and which hath been constantly mentioned, together with the crime itself, in the course of the former chapters; and such judgment ought regularly (as in civil actions) in all cases to be *recorded* (*i*). The punishment of offences is in some cases governed by the common law only, but is more frequently defined by statute (*k*). In misdemeanors, it is generally fine or imprisonment or both; in felonies, it is usually imprisonment or penal servitude: the imprisonment being frequently accompanied (both in misdemeanor and felony) with hard labour—to which whipping and solitary confinement, to the extent presently to be mentioned, are also sometimes added (*l*).

(*i*) By 4 Geo. 4, c. 48, whenever any person shall be convicted of any capital felony, except *murder*, and the court before whom he is convicted shall be of opinion that, under the particular circumstances of the case, he is a fit subject for the royal mercy, the court may abstain from pronouncing judgment of death, and instead of pronouncing it, only order it to be *recorded;* which, being entered on record, is to have the same effect as if the judgment had been pronounced, and the offender reprieved. By 6 & 7 Will. 4, c. 30, and 7 Will. 4 & 1 Vict. c. 77, s. 3, the above exception was in effect taken away; but both of these last provisions are now (so far as respects the present point) repealed by 24 & 25 Vict. c. 95, and the power of the court (under 24 & 25 Vict. c. 100, s. 2) to cause sentence of death to be *recorded* in cases of murder, appears to be somewhat doubtful. See Criminal Acts, by Greaves, p. 30; Arch. Pl. & Ev. in Crim. Ca. 15th ed. 534; Rosc. Dig. C. C. 208.

(*k*) In the case of a *felony* for which no other punishment is provided, there may, by 7 & 8 Geo. 4, c. 28, s. 8, and 20 & 21 Vict. c. 3, be awarded penal servitude to the extent of seven years, or imprisonment (with or without hard labour, solitary confinement and whipping) to the extent of two years. In case of a *misdemeanor* for which no other punishment is provided, there may be awarded, by the common law, fine and imprisonment at the discretion of the court.

(*l*) The punishment of *whipping* was inflicted, at common law, on persons of inferior condition, who were guilty of petty larceny, and other smaller offences, but it seems that, by the usage of the Star Chamber, it was never to be inflicted on a gentleman (1 Chit. C. L. 796). Blackstone enumerates also (vol. iv. p. 377) the *pillory*, the *stocks*, and the *ducking stool*,

In cases punishable at common law, the judge has a discretion whether fine or imprisonment, or both, shall be awarded, and the measure of either is also left to his decision. And where the punishment is fixed by statute, there is also usually reposed in him, in cases of felony, a discretion between imprisonment and penal servitude; and in case both of felony and misdemeanor, (where either of these modes of punishment is adopted,) a power of determining, within certain limits at least, the period of its duration (*n*). The judge, however, cannot inflict for any offence, a punishment not specifically made applicable to such offence by the law itself. And by the Bill of Rights (1 W. & M. sess. 2, c. 2) it is declared as one of the antient rights and liberties of the subjects of this realm, that no cruel and unusual punishments are to be inflicted. Some further remarks on those that have been mentioned, may here be material.

[As to *fines*, their *quantum* neither can nor ought to be ascertained by any invariable law. The value of money itself changes from a thousand causes; and at all events what is ruin to one man's fortune, may be matter of in-

as ignominious punishments known to the English law. But the first of these is abolished by 7 Will. 4 & 1 Vict. c. 28, and the two last are disused.

(*n*) Whenever sentence is passed for felony, on a person already imprisoned under sentence for another crime, the court may award imprisonment for the subsequent offence to commence from the expiration of the first imprisonment (7 & 8 Geo. 4, c. 28, s. 10). And where such person is already under sentence either of imprisonment or penal servitude, the court, if empowered to sentence to penal servitude, may award it for the subsequent offence, to commence at the expiration of the first sentence; and this, although the aggregate term of imprisonment or penal servitude, respectively, may exceed the term for which either punishment could otherwise be awarded. (7 & 8 Geo. 4, c. 28, s. 10; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3.) Moreover in all cases where the court by any statute is empowered or required to award a sentence of penal servitude exceeding *seven years*, the court may substitute the term of seven years, or else imprisonment, with or without hard labour, to the extent of two years (9 & 10 Vict. c. 24; 20 & 21 Vict. c. 3).

[difference to another's. Thus the law of the Twelve Tables at Rome fined every person, who struck another, five-and-twenty denarii: which, in the more opulent days of the empire, grew to be a punishment of so little consideration, that Aulus Gellius tells a story of one Lucius Neratius, who made it his diversion to give a blow to whomsoever he pleased, and then tender them the legal forfeiture. Our law, therefore, has not often ascertained the quantity of fines,—directing rather that such or such an offence be punished "by fine" in general, without specifying the certain sum,—which is fully sufficient when we consider that, however unlimited the power of the court may seem, it is far from being wholly arbitrary, but its discretion is regulated by law. For the Bill of Rights,—which, as just mentioned, prohibits cruel and unusual punishments,—also particularly declares that excessive fines shall not be imposed(*o*); and the same statute further declares, that all grants and promises of fines and forfeitures, of particular persons, before conviction, are illegal and void,—a doctrine held long before: since thereby many times undue means and more violent prosecution would be used for private lucre, than the quiet and just proceeding of law would permit(*p*).

The reasonableness of fines in criminal cases has also been usually regulated by the determination of *Magna Charta*, c. 14, concerning amercements for misbehaviour by the suitors in matters of civil right. "*Liber homo non amercietur pro parvo delicto, nisi secundum modum ipsius delicti; et pro magno delicto, secundum magnitudinem delicti, salvo contenemento suo; et mercator eodem modo, salvâ mercandisâ suâ; et villanus eodem modo amercietur, salvo wainagio suo.*" A rule that obtained

(*o*) When the judges imposed a fine of 30,000*l.* on the Duke of Devonshire, for striking within the limits of one of his majesty's palaces, the house of lords declared that their conduct was oppressive and illegal. (11 Harg. St. Tr. 136; and see as to Oates's case, 4 Harg. St. Tr. 106.)

(*p*) 2 Inst. 48.

[even in Henry the second's time (*q*); and means only that no man shall have a larger amercement imposed upon him than his circumstances or estate will bear; saving to the landowner his contenement or land (*r*); to the trader his merchandize: and to the countryman his wainage, or team and instruments of husbandry. In order to ascertain which, the Great Charter also directs, that the amercement, which is always inflicted in general terms ("*sit in misericordiâ*"), shall be set, *ponatur*, or reduced to a certainty, by the oath of good and lawful men of the neighbourhood. Which method of liquidating the amercement to a precise sum, was usually performed in the superior courts (*s*) by the assessment or *affeerment* of the coroner, a sworn officer chosen by the neighbourhood, under the equity of the statute of Westm. 1, c. 18; and then the judges estreated the amount into the Exchequer (*t*). Amercements imposed by the superior courts on their own officers and ministers, were affeered by the judges themselves; but when a pecuniary mulct was inflicted by them on a stranger to, or person not being an officer of, the court (*u*), it was then denominated a *fine*; and the antient practice was, when any such fine was imposed, to inquire by a jury, "*quantum inde regi dare valeat per annum, salvâ sustentatione suâ, et uxoris, et*

(*q*) Glanv. b. 9, c. 8, s. 11.

(*r*) Lord Coke says, "that *con-* "*tenement* signifieth his *counte-* "*nance*, as the armour of a soldier "is his countenance, the books of "a scholar his countenance, and the "like."—(2 Inst. 28.) He adds, that "the *wainagium* is the coun- "tenance of the villain; and it was "great reason to save his wainage, "for otherwise the miserable crea- "ture was to carry the burthen on "his back."

(*s*) In the court leet and court baron it was performed by *affeerors*, or suitors sworn to *affeere*; that is, tax and moderate the general amercement, according to the particular circumstances of the offence and the offender. The affeeror's oath is conceived in the very terms of *Magna Charta*. As to which, Blackstone (vol. iv. p. 380) cites Fitz, Survey, c. 11.

(*t*) F. N. B. 76.

(*u*) 8 Rep. 40. The words of Blackstone are—"a stranger, not "being party to any suit"—(4 Bl. Com. 380); but Lord Coke says, "a stranger to the court."

[*liberorum suorum*" (*x*). And since the disuse of such inquest, it is never usual to assess a larger fine than a man is able to pay without touching the implements of his livelihood; but to inflict corporal punishment, or a limited imprisonment, instead of such fine as might amount to imprisonment for life. And this is the reason why fines in the king's court are frequently denominated ransoms; because the penalty must otherwise fall upon a man's person, unless it be redeemed or ransomed by a pecuniary fine (*y*); according to an antient maxim, *qui non habet in crumenâ luat in corpore.* Yet, where any statute speaks both of fine and ransom, it is holden that the ransom shall be treble the fine at least (*z*).]

As to *imprisonment* (*a*), its measure, when imposed under modern Acts of parliament as a punishment for crime, is now usually limited so as not to exceed two years (*b*); and, in connection with it, the sentence frequently inflicts the additional severity of *solitary confinement*, or of *hard labour*, or both, according to the nature

(*x*) Gilb. Excheq. c. 5.

(*y*) Mirrour, c. 5, s. 3; Lamb. Eirenarch. 575.

(*z*) Norton's case, Dyer, 232.

(*a*) It may be observed, that offenders under the age of *sixteen*, convicted before any court, magistrate, or justice of the peace, and whose sentence shall include imprisonment for, at the least, ten days,—may be ordered to be detained, after the period of imprisonment, in a certified *reformatory school* for not less than two nor more than five years; but if the offender be under the age of *ten*, he must have been previously charged with some offence punishable with penal servitude, or imprisonment, or be sentenced by a judge of assize or court of general or quarter sessions. (As to these schools, see 29 & 30 Vict. c. 117.) See also 25 & 26 Vict. c. 44, and 28 & 29 Vict. c. 126, ss. 41—43, enabling the visiting justices of gaols to direct pecuniary relief, in certain cases, to be afforded to prisoners on leaving prison, either directly or through the medium of a certified *Prisoners' Aid Society*.

(*b*) See 24 & 25 Vict. cc. 96, 97, 98, 99, 100, *passim*. By some earlier statutes, however, still unrepealed, the periods of imprisonment authorized for offences under their provisions are sometimes three and even four years.

of the case (*c*). But the 7 Will. IV. & 1 Vict. c. 90, s. 5, contains a general provision, that it shall not be lawful to direct an offender to be kept in solitary confinement for any longer period than one month at a time, or than three months in the space of one year; and a similar limitation is inserted in each of the Criminal Consolidation Acts of 1861 (viz. 24 & 25 Vict. cc. 96, 97, 98, 99, 100), in reference to the offences punishable under those statutes respectively. As to hard labour, regulations respecting its nature and severity have been made, under which it is divided into two classes; one for the employment of males above the age of sixteen, the other of males below that age and of females (*d*).

As to *whipping*, the offender, under such modern Acts of parliament as authorize this punishment, may be directed to be whipped in addition to any imprisonment awarded. By 1 Geo. IV. c. 57, however, judgment shall in no case be given that any *female* convicted of any offence shall be whipped either publicly or privately: and in cases where the whipping of female offenders had, before that Act, formed either a part or the whole of the sentence,—the court or justice of the peace is empowered to pass sentence of confinement with hard labour in the common gaol or house of correction, for any time not exceeding six months, nor less than one month; (or of solitary confinement therein, for any space not exceeding seven days at any one time;) *in lieu* of the sentence of being publicly or privately whipped. Moreover, by the Criminal Consolidation Acts of 1861, already so often referred to, the addition of whipping by them authorized in

(*c*) The punishment of *hard labour* is said to have been first introduced by 5 Ann. c. 6. (See R. *v.* Baker, 7 A. & E. 502.) Hard labour may now be added, in most cases, to the sentence of imprisonment. (See 24 & 25 Vict. cc. 96, 97, 98, 99, 100, *passim*.)

(*d*) See 28 & 29 Vict. c. 126, s. 19, and Part IV. sched. I. reg. 34—38.

reference to a variety of the offences therein mentioned, is uniformly confined to males below the age of *sixteen* (*e*); and the whipping is to be in private and only to be inflicted *once;* and the number of strokes and the instrument with which they are to be inflicted are to be specified by the court in the sentence. And a similar provision is made by 25 & 26 Vict. c. 18, in reference to this punishment when awarded by a justice or justices in the exercise of his or their *summary jurisdiction*,—with the addition, that in case of an offender whose age does not exceed fourteen years, the number of strokes inflicted shall not exceed twelve, and the instrument used shall be a birch rod. On the other hand, when the sentence of whipping is inflicted under the 26 & 27 Vict. c. 44, an Act passed in the year 1863 "for the further security of the persons of her Majesty's subjects from personal violence" (*f*), the punishment may be ordered to be repeated twice, or even thrice; and there is no limitation whatever as to the age of the offender; though if his age does not exceed sixteen, the number of strokes at each infliction is not to exceed twenty-five, and to be with a birch rod; and in the case of older offenders the number of strokes, at each whipping, is not to exceed fifty. Moreover, in every case, the sentence is to specify the number of strokes and the instrument to be used. And no whipping is to take place after the expiration of six months from the passing of the sentence.

As to *penal servitude*, this is a sentence which has been now introduced in substitution for that of *transportation beyond the seas* (*g*). The principal statute in

(*e*) See 24 & 25 Vict. cc. 96, 97, 98, 99, 100, *passim*. In one instance (24 & 25 Vict. c. 96, s. 101), the age mentioned is *eighteen;* but this is probably a clerical error.

(*f*) As to this Act, vide sup. pp. 82, 128.

(*g*) Transportation is said (Barr. on Statutes, 352) to have been first inflicted as a punishment by 39 Eliz. c. 4. As to its history, see R. v. Baker, 7 A. & E. 502; Bullock

reference to such transportation is the 5 Geo. IV. c. 84, by which the law on that subject was revised and consolidated in the year 1824 (*h*). Under that Act, the sovereign was enabled to appoint places beyond the seas, either within or without the dominions of the Crown, to which offenders under sentence of transportation might be conveyed and kept to hard labour; and also places, in England or Wales, for their confinement until transported or discharged, or otherwise disposed of by the secretary of state. But great difficulty having arisen, of late years, in finding colonies willing to receive transported convicts, it became gradually the practice, as to certain classes of convicts who had been sentenced to transportation, to detain them in the mother-country for the whole period of their term of punishment; and it was ultimately thought expedient to abolish the sentence of "transportation" altogether, and to substitute for it that of "penal servitude," under which convicts may be subjected to such confinement and discipline (either at home or abroad) as shall be found practicable and desirable (*i*).

This change was accordingly carried into effect by the "Penal Servitude Acts," that is to say, by 16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3; the latter of which Acts, after providing that no person shall for the future be sentenced to transportation, enacts that any persons who, if those Acts had not passed, might have been so sentenced, shall be liable to be sentenced to be kept in *penal servitude* for a term of the same duration; and further, that any person who might have been sentenced *either* to trans-

v. Dodds, 2 B. & Ald. 262, 267; Whitehead *v.* The Queen, 7 Q. B. 532.

(*h*) This Act is amended by 6 Geo. 4, c. 69; 11 Geo. 4 & 1 Will. 4, c. 39; 2 & 3 Will. 4, c. 62; 4 & 5 Will. 4, c. 65; 7 Will. 4 & 1 Vict. c. 90; 6 & 7 Vict. c. 7; 10 & 11 Vict. c. 67; 16 & 17 Vict. c. 99, s. 7; 20 & 21 Vict. c. 3; 22 Vict. c. 25.

(*i*) See the Evidence of Mr. Waddington, before the select committee of the House of Commons, on Transportation. (Second Report, p. 3.)

portation or imprisonment, may be sentenced either to penal servitude or to imprisonment (*k*). This Act also provided, that where, under the former law, seven years transportation might have been awarded, penal servitude for three years might be substituted. But, as to this, a further alteration of the law has since taken place; it being enacted by the 27 & 28 Vict. c. 47, that no person shall, in any case, be sentenced to penal servitude for a shorter period than *five* years; or, if previously convicted for felony, (either on indictment or by way of summary conviction,) for less than *seven* years.

It is moreover provided by the Penal Servitude Acts, that every person sentenced to this punishment may be kept either in any prison or place of confinement in the united kingdom, or in any river, port, or harbour thereof, —or else in some place in her Majesty's dominions beyond the seas, duly appointed for such purpose by order in Council,—according as the secretary of state shall from time to time direct; and may, while confined there, be kept to hard labour and otherwise dealt with, in like manner as persons sentenced to transportation might formerly be dealt with while so confined (*l*).

By the same Acts it is also made lawful for her Majesty (*m*), by order in writing, under the hand and seal

(*k*) 20 & 21 Vict. c. 3, s. 6.

(*l*) 16 & 17 Vict. c. 99, s. 6; 20 & 21 Vict. c. 3, s. 3.

(*m*) See 16 & 17 Vict. c. 99, s. 9; 20 & 21 Vict. c. 3, s. 5; 27 & 28 Vict. c. 47, ss. 4—10. The Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), also contains some provisions with regard to the holders of licences to be at large, granted under the above Acts (ss. 3, 4, 5). Under the authority of the Secretary of State for the Home Department, a prisoner sentenced to penal servitude is informed on arriving at prison, that he will, by a regular course of industry while undergoing his sentence, be enabled to obtain his liberty under a "licence to be at large," at a certain fixed time before the expiration of the period for which he has been sentenced,—varying according to the number of years for which he has been sentenced. But if he has been sentenced to penal servitude *for life*, no remission can take place but by order of the secretary of state, supposing that the special circumstances of the case appear to warrant any

of the secretary of state, to grant to any convict sentenced either to be kept in penal servitude, or to be imprisoned, a *licence to be at large*, in the united kingdom and the channel islands, (or in such part thereof respectively as shall be expressed in the licence,) during such portion of his term, and on such conditions in all respects, as to her Majesty shall seem fit (*o*). But such licence may be revoked or altered at pleasure; and will be forfeited if the holder shall be subsequently convicted of any indictable offence, or if he shall fail to report himself to the proper officer once in every month, or to give due notice of any change of residence (*p*); and if it be so revoked or forfeited, the convict may be sent back to the prison from which he was released by virtue of his licence, or be placed in any other prison wherein convicts under sentence of penal servitude may be lawfully confined (*q*). And we may notice, that with the object of more effectually preventing crime, a *register* of criminals has been recently established, and their photographs taken and distributed so as to facilitate their identification (*r*).

It may be here remarked, that it forms one of the provisions of the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), that where any person is convicted on indictment of a crime, and a previous conviction of a crime is proved against him, the court may, in addition to any other punishment, direct that he is to be subject to the *supervision of the police* for a period not exceeding seven years, commencing immediately after the expiration of the

indulgence. These regulations, and the scale of periods of remission, are contained in a circular letter addressed by the then secretary (Sir G. Grey) to each of the judges and chairmen of quarter sessions, dated 15th August, 1864.

(*o*) 16 & 17 Vict. c. 99, s. 9. And see 34 & 35 Vict. c. 112, s. 5.

(*p*) 27 & 28 Vict. c. 47, s. 4.

(*q*) 16 & 17 Vict. c. 99, ss. 10, 11; 20 & 21 Vict. c. 3, s. 5; 27 & 28 Vict. c. 47, s. 9; 34 & 35 Vict. c. 112, s. 5.

(*r*) See ss. 5 and 8 of 34 & 35 Vict. c. 112, an Act which repeals the 32 & 33 Vict. c. 99 (The Habitual Criminals Act, 1869).

sentence passed on him for the last of such crimes; and that any person, so subject to such supervision, who shall remain in any place for forty-eight hours without notifying the place of his residence to the chief officer of police for the district, or who shall fail to comply with the requisitions of the Act, in periodically reporting himself to such chief officer, shall, unless he can show that he did his best to act in conformity to the law, be liable to be imprisoned, with or without hard labour, for any period not exceeding one year (*s*).

When sentence of *death*, the most terrible judgment in the laws of England, is pronounced, the mode in which it is to take place is particularized in the sentence itself, and this is always that the prisoner be hanged by the neck till dead; a mode of capital punishment that has been in use in this country from time immemorial (*t*).

[At the common law, upon the passing of this sentence, the immediate and inseparable consequence was *attainder*. For when it was thus made clear beyond all dispute that the criminal was no longer fit to live upon the earth, but was to be exterminated as a monster, and a bane to human society, the law set a note of infamy upon him; called him attaint, *attinctus*, stained or blackened: withdrew from him in general all civil rights (*u*); and considered him, by an anticipation of his punishment, as already dead in law (*x*). But none of these consequences arose until after *judgment;* for there was a great difference between a man *convicted* and one *attainted*—though they were frequently through inaccuracy confounded together. After conviction only, a man was liable to none of these disabilities; for there was still, in contemplation of law, a possibility of his innocence, as something might be offered in arrest of

(*s*) 34 & 35 Vict. c. 112, s. 8.

(*t*) 2 Hale, P. C. 399; Hawk. P. C. b. 2, c. 48, s. 7.

(*u*) As to the capacity of a person attainted to contract a legal marriage, see Kynnaird *v.* Leslie, Law Rep., 1 C. P. 401.

(*x*) 3 Inst. 213.

[judgment. But when judgment was once pronounced, both law and fact conspired to prove him completely guilty; and there was not the remotest possibility left of any thing to be said in his favour. Upon judgment therefore of death, and not before, the attainder of a criminal commenced (*y*):—or upon such circumstances as were equivalent to judgment of death,—such as judgment of outlawry on a capital crime, pronounced for absconding or fleeing from justice; which tacitly confesses the guilt. And, therefore, either upon judgment of outlawry, or of death, for treason or felony, a man was said to be attainted.]

Among the consequences of attainder were, until recently, *forfeiture* and *corruption of blood.*

Forfeiture upon attainder, accrued in the first place in the crime of treason. And here the criminal forfeited for ever to the Crown all his freehold lands and tenements of inheritance, whether held in fee simple or fee tail; and all his rights of entry on freehold lands and tenements which he had at the time of the offence committed, or at any time afterwards: and also the profits of all freehold land and tenements which he had in his own right for life or years, so long as such interest should subsist (*z*).

This forfeiture related backwards to the time of the treason committed: so as to avoid all intermediate sales and incumbrances, but not those before the fact (*a*); and therefore a wife's jointure was not forfeitable for the treason of her husband, because settled on her previous to the treason committed; but her dower was forfeited by the express provision of statute 5 & 6 Edw. VI. c. 11 (*b*).

(*y*) R. *v.* Bridger, 1 Mee. & W. 145.

(*z*) Co. Litt. 392; 3 Inst. 19; 1 Hale, P. C. 240; Hawk. P. C. b. 2, c. 49.

(*a*) 3 Inst. 211.

(*b*) Counterfeiting the coin of the realm was formerly treason; but by some of the statutes constituting the offence, 5 Eliz. c. 11, 18 Eliz. c. 1, 8 & 9 Will. 3, c. 26, 15 Geo. 2, c. 28, it was provided, that it should work no forfeiture of lands except for the life of the offender; and by all, that it should not deprive the wife of her dower.

And yet the husband was held entitled to be tenant by the curtesy of the wife's lands, if the wife were attainted of treason; for that was not prohibited by the statute (*c*). But though after attainder the forfeiture related back to the time of the treason committed, yet it did not take effect unless an attainder were had, of which it was one of the fruits; and therefore if a traitor died before judgment pronounced, or was killed in open rebellion, or hanged by martial law, it worked no forfeiture of his lands, for he never was attainted of treason (*d*).

With us in England forfeiture for treason was by no means derived from the feudal policy, but was antecedent to the establishment of that system in this island, being

(*c*) 1 Hale, P. C. 359.

(*d*) See Co. Litt. 13; 4 Rep. 57. It was enacted by 7 Ann. c. 21, that after the decease of the then Pretender no attainder for treason should extend to the disinheriting of any heir, nor to the prejudice of any person other than the traitor himself. The history of this matter is somewhat singular, and worthy of observation. Blackstone's account of it (vol. iv. p. 384) is as follows: "At the time of "the Union, the crime of treason "in Scotland was, by the Scots law, "in many respects different from "that in England; and particularly "in its consequence of forfeitures "of entailed estates, which was more "peculiarly English; yet it seemed "necessary that a crime so nearly "affecting government should, both "in its essence and consequences, "be put upon the same footing "in both parts of the united king-"dom. In new modelling these "laws, the Scotch nation and the "English house of commons strug-"gled hard, partly to maintain, and "partly to acquire, a total immu-"nity from forfeiture and corrup-"tion of blood; which the house "of lords as firmly resisted. At "length a compromise was agreed "to, which is established by this "statute, viz. that the same crimes, "and no other, should be treason in "Scotland that are so in England; "and that the English forfeitures "and corruption of blood should take "place in Scotland till the death of "the then Pretender, and then cease "throughout the whole of Great "Britain; the lords artfully propos-"ing this temporary clause in hopes, "it is said, that the prudence of suc-"ceeding parliaments would make it "perpetual." (See Burnet's Hist. A.D. 1709; and "Considerations on the Law of Forfeiture," vol. i. p. 244.) This was partly done by the statute 17 Geo. 2, c. 39, made in the year preceding the rebellion of 1745. And by 39 & 40 Geo. 3, c. 93, the above mentioned provision of the stat. 7 Ann. c. 21, was repealed.

transmitted from our Saxon ancestors, and forming a part of the antient Scandinavian constitution.

In support of the doctrine of forfeiture being based on natural justice, it has been argued that so far as treason is concerned,—he who violates the fundamental principles of government, and breaks his part of the original contract between king and people, must be held to have abandoned his connections with society, and no longer to have any right to those advantages which before belonged to him purely as a member of the community; among which social advantages the right of transferring or transmitting property to others is one of the chief. [Such forfeitures, moreover, whereby his posterity must suffer as well as himself, must be calculated to restrain a man, not only by the sense of his duty and dread of personal punishment, but also by his passions and natural affections; and should interest every dependent and relation, to keep him from offending: according to that sentiment of Cicero, "*nec vero me fugit quam sit acerbum, parentum scelera filiorum pœnis lui; sed hoc præclare legibus comparatum est, ut caritas liberorum amiciores parentes reipublicæ redderet*" (*f*). And therefore Aulus Cascellius, a Roman lawyer in the time of the triumvirate, used to boast that he had two reasons for despising the power of the tyrants, his old age and his want of children; for children are pledges to the prince of the father's obedience (*g*). Yet many nations (even in antient times) have thought that this posthumous punishment savours of hardship to the innocent, especially for crimes that do not strike at the very root and foundations of society, as treason against the government expressly does. And therefore, though confiscations were very frequent in the times of the earlier emperors, yet Arcadius and Honorius, in every other instance but that of treason, thought it more just, "*ibi esse pœnam, ubi et*

(*f*) Ad Brutum, ep. 12. (*g*) Gravin. 1, a. 68.

[*noxa est;*" and ordered that "*peccata suos teneant auctores, nec ulterius progrediatur metus, quam reperiatur delictum*" (*h*). And Justinian, also, made a law to restrain the punishment of relations (*i*); which directs the forfeiture to go, except in the case of *crimen majestatis*, to the next of kin to the delinquent. On the other hand, the Macedonian laws extended even the capital punishment of treason, not only to the children, but to all the relations of the traitor (*k*); and of course their estates must also be forfeited, as no man was left to inherit them. And in Germany, by the famous golden bulle (*l*), copied almost *verbatim* from Justinian's code (*m*), the lives of the sons of such as conspire to kill an elector are spared, as it is expressed, by the emperor's *particular bounty*. But they are deprived of all their effects and rights of succession, and are rendered incapable of any honour, ecclesiastical or civil, "to the end that, being always poor and neces-" sitous, they may for ever be accompanied by the infamy " of their father; may languish in continual indigence; " and may find," says this merciless edict, " their punish-" ment in living, and their relief in dying."]

The law as to attainder for *murder* was somewhat different. Here the offender forfeited only to the Crown the profits of his freehold estates during life, and also (in the case of lands held by him in fee simple, though not with regard to those held in tail) the lands themselves, for a year and a day, with power to the Crown of committing upon them what waste it pleased: and subject to this temporary forfeiture the lands escheated to the lord of the fee. This antient doctrine as to the right of the Crown for a year and a day requires, however, some further explanation (*n*). [Formerly, then, the sovereign had a liberty of committing waste on the lands of *all* felons by pulling down their houses, extirpating their gardens, ploughing

(*h*) Cod. 9, 47, 22.
(*i*) Nov. 134, c. 13.
(*k*) Qu. Curt. l. 6.
(*l*) Cap. 24.
(*m*) L. 9, t. 8, l. 5.
(*n*) 2 Inst. 37.

[their meadows, and cutting down their woods (*o*). But this tending greatly to the prejudice of the public, it was agreed in the reign of Henry the first, that the king should have the profits of the land for one year and a day, in lieu of the destruction he was otherwise at liberty to commit (*p*). And, therefore, *Magna Charta* provided that the king should only hold such lands for a year and a day, and then restore them to the lord of the fee, without any mention made of waste (*q*). But the statute 17 Edw. II., *De prærogativâ regis*, seemed to suppose that the king should have his year, day *and* waste, and not the year and day *instead of* waste; which Sir Edward Coke and the author of the Mirrour before him, very justly looked upon as an encroachment, though a very antient one, of the royal prerogative (*r*).] Such continued to be the state of the law on this subject until the passing of the 54 Geo. III. c. 145, though it became the practice to compound for the year, day and waste, in order to prevent the Crown from exercising its right of entry. But by the statute just mentioned it was enacted, that no future attainder for felony (except in cases of *treason* or *murder*) should extend to the disinheritance of any heir, or to the prejudice of the right or title of any person other than the right or title of the offender during his life only; and that it should be lawful for every person to whom the right or interest of any lands, tenements or hereditaments after the death of such offender should or might have appertained if no such attainder had been, to enter into the same, the attainder notwithstanding.

The forfeitures above mentioned all arose, it will be

(*o*) A punishment of a similar spirit (adds Blackstone, vol. iv. p. 385) appears to have obtained in the oriental countries, from the decrees of Nebuchadnezzar and Cyrus, in the books of Daniel and Ezra, which, besides the pain of death inflicted on the delinquents there specified, ordain "that their houses shall be made a dunghill." (Dan. c. iii. 29; Ezra, c. vi. 11.)

(*p*) Mirr. c. 4, s. 16; Flet. l. 1, c. 28.

(*q*) 9 Hen. 3, c. 22.

(*r*) Mirr. c. 5, s. 2; 2 Inst. 37.

observed, only as consequences of attainder (*s*); and therefore a *felo de se* forfeited no lands of inheritance or freehold, for he could never be attainted though found to be a felon (*t*). But, on the other hand, they related back to the time of the offence committed, so as to avoid all intermediate charges and conveyances.

Another consequence of attainder in treason and murder was *corruption of blood*, both upwards and downwards; so that an attainted person could neither inherit lands or other hereditaments from his ancestors, nor *transmit* them by descent to any heir; but the same escheated to the lord of the fee, subject to the Crown's superior right of forfeiture. But having had occasion to enlarge on this matter in a former volume, where the subject of *escheat* was in question, it is not necessary to detain the reader longer upon it in this place (*u*),—further than to remind him that by the 33 & 34 Vict. c. 23 (The Felony Act, 1870), s. 1, it was provided that after the passing of that Act no judgment for any treason or felony shall cause any corruption of blood (*x*).

In addition however to the forfeitures peculiar to attainder, it is to be understood that forfeiture of *goods and chattels* (both real and personal), ensued not only on attainder, but on *conviction* for a felony of any kind, whether capital or otherwise (*y*). [For *flight* also, on an accusation of treason or felony, whether the party were found guilty or acquitted, if the jury found the flight, the

(*s*) R. *v.* Bridges, 1 Mee. & W. 145.

(*t*) 3 Inst. 55. See Norris *v.* Chambers, 30 L. J., Ch. 290.

(*u*) Vide sup. vol. I. p. 458 et seq.

(*x*) Vide sup. vol. I. p. 446.

(*y*) Forfeiture of *goods and chattels* accrued, consequently, on a verdict of *self-murder* (vide sup. p. 62). On the other hand, an exception to the general rule as to the consequences of a conviction for felony is to be noticed in regard to a conviction for larceny by way of summary conviction, under the 10 & 11 Vict. c. 82, 13 & 14 Vict. c. 37, or 18 & 19 Vict. c. 126; for such a conviction was never attended by any forfeiture. (As to these Acts, vide sup. p. 332.)

[party forfeited his goods and chattels; for the very flight was held an offence carrying with it a strong presumption of guilt, and at least an endeavour to elude and stifle the course of justice prescribed by the law. But in modern times it became unusual for the jury to find the flight; forfeiture being looked upon, since the vast increase of personal property of late years, as too large a penalty for an offence to which a man is prompted by the natural love of liberty (*z*).] And by statute 7 & 8 Geo. IV. c. 28, s. 5, it was expressly enacted, that the jury impanelled to try a person indicted for treason or felony should no longer be charged to inquire whether he fled for such treason or felony.

To revert to the forfeitures which took place on judgment of death or outlawry, and those which accrued on conviction for felonies generally, some remarkable differences will be noticed between the two. [1. Lands were forfeited upon *attainder*, and not before; goods and chattels became forfeited by *conviction* (*a*): because in many cases of convictions for felony there never was any attainder; therefore, in those cases, the forfeiture must have been upon conviction, or not at all; and, being necessarily upon conviction in those, it was so ordered in all other cases; the law loving uniformity. 2. In outlawries for treason or felony, lands were forfeited only by the judgment; but the goods and chattels were forfeited by a man's being first put into the *exigent*, without staying till he is *quinto exactus*, or finally outlawed; for the secreting himself so long from justice was construed a flight in law (*b*). 3. The forfeiture of lands had relation to the time of the fact committed, so as to avoid all subsequent sales and incumbrances; but the forfeiture of goods and chattels had no relation backwards; so that those only which a

(*z*) Staundf. P. C. 188 b; 4 Bl. Com. 387.

(*a*) See Roberts *v.* Walker, 1 Russ. & Myl. 756.

(*b*) 3 Inst. 232.

[man had at the time of conviction were forfeited. Therefore a traitor or felon might *bonâ fide* sell any of his chattels (real or personal), for the sustenance of himself and family between the fact and conviction (*c*); for personal property is of so fluctuating a nature, that it passes through many hands in a short time; and no buyer could have been safe if he had been held liable to return the goods which he had fairly bought, provided any of the prior vendors had committed a treason or felony. Yet if they were collusively and not *bonâ fide* parted with, but merely to defraud the Crown, the law, and particularly the statute 13 Eliz. c. 5, was strong enough to reach them; for they were all the while truly and substantially the goods of the offender.]

The doctrines relating to forfeiture for crime, of which some account has been thus presented to the reader, are still deserving of attention; but their practical importance is now greatly lessened, by the sweeping change which was introduced in the year 1870, by the 33 & 34 Vict. c. 23, to which we have already in other parts of this work found occasion to make frequent reference. It will be remembered that by that Act it is provided that thenceforth no confession, verdict, inquest, conviction or judgment of or for any treason or felony or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat (*d*). But, instead of these consequences, the Act proceeds to provide that a conviction for treason or felony, followed by a sentence of death or penal servitude or any term of imprisonment with hard labour exceeding twelve months, shall disqualify the person convicted, to hold or retain any military, naval or civil office under the Crown, or other public employment, or any ecclesiastical benefice, or any place, office or emolument in any university or other corporation, or to retain any pension or superannuation

(*c*) Hawk. P. C. b. 2, c. 49, s. 33. (*d*) 33 & 34 Vict. c. 23, s. 1.

allowance,—unless he shall receive a free pardon from her Majesty within two months after conviction (*e*). And the same statute further provides that the property of the convict may be committed to the custody and management of *administrators*, to be appointed by the Crown; or (in default of such appointment) to the management of *interim curators*, who may be appointed by the justices of the peace, on an application made in the interest of the convict or his family; and that such administrators or curators are to pay his debts and liabilities, and support his family; and shall preserve the residue of his property for the convict himself or his representatives, on the completion of his punishment, his pardon or his death (*f*). It is however to be noted, that the above Act expressly excludes from its operation the law of forfeiture consequent upon *outlawry*; and therefore the previous consequences of a judgment of outlawry on a charge of felony (as above explained), would seem to be still in force (*g*).

(*e*) 33 & 34 Vict. c. 23, s. 2. The convicted felon is also made incapable of being elected or sitting or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise. (Ibid.)

(*f*) Secta. 9, 18.

(*g*) Sect. 1. Vide sup. p. 454.

CHAPTER XXIV.

OF REVERSAL OF JUDGMENT.

WE are next to consider how judgments may be set aside (*a*). There are two ways of doing this; either by falsifying or reversing the judgment, or else by reprieve or pardon.

[A judgment may be falsified, reversed, or avoided, in the first place, *without a writ of error;* for matters foreign to or *dehors* the record, that is, not apparent upon the face of it, so that they cannot be assigned for error in the superior court, which can only judge from what appears in the record itself. For example, where a commission issues to A. and B. and twelve others, or any two of them, of which A. or B. shall be one, to take and try indictments, and any of the other twelve proceed without the interposition or presence of either A. or B.; in this case all proceedings, trials, convictions and judgments against any person are void for want of a proper authority in the commissioners, and may be falsified in any other cause or court upon bare inspection, without the trouble of a writ of error (*b*),—it being a high misdemeanor in the judges so proceeding, and little, (if anything,) short of murder in them all, in case any person on such a judgment be executed and suffer death.]

Secondly, a judgment may be reversed *by writ of error;* which lies from all inferior criminal jurisdictions to the

(*a*) Vide sup. p. 344. (*b*) Hawk. P. C. b. 2, c. 50, ss. 2, 3.

Queen's Bench (*d*); and may be brought for notorious and substantial mistakes in the judgment or other parts of the record; as, by way of example, if a man found guilty of the misdemeanor of perjury should be adjudged a felon (*e*). But for merely *formal* defects, no writ of error can now be brought; it being provided (as we have seen), that all such shall be either immaterial, or, when still ground for objection, shall at least be brought forward by demurrer or motion to quash the indictment (*f*). It is also to be observed, that a writ of error is never allowed, even in case of a mere misdemeanor, as of course; but only on sufficient probable cause shown to the attorney-general (*g*): and then it is understood to be grantable of common right, and *ex debito justitiæ* (*h*). And by 8 & 9 Vict. c. 68—amended by 9 & 10 Vict. c. 24, and 16 & 17 Vict. c. 32,—where judgment shall have been given against a defendant indicted for a misdemeanor, and he shall have obtained a writ of error to reverse it, execution thereon shall be stayed, and the defendant discharged from imprisonment until such writ of error shall be finally determined; but this is subject to a proviso, that no execution shall be stayed, nor discharge take place, until the defendant shall be bound by recognizance, (with two sufficient sureties,) to prosecute the writ of error with effect, and personally to appear in court on the day on which judgment thereon shall be given; and, in case the judgment be affirmed, forthwith to render himself to prison according to the judgment (*i*). As for writs of error to reverse judgment in

(*d*) If the sentence appears to be erroneous, but the indictment valid, the prisoner must be discharged. (R. *v.* Bourne, 7 A. & E. 58.) As to writs of error sued out for the purpose of compromising a prosecution, see Alleyne's case, 1 Dearsley's C. C. R. 505; 4 Ell. & Bl. 186.

(*e*) 4 Bl. Com. p. 391.

(*f*) Vide sup. p. 399.

(*g*) See Ex parte Lees, 1 Ell. Bl. & Ell. 828.

(*h*) See Ex parte Newton, 4 Ell. & Bl. 869; 16 C. B. 97.

(*i*) As to the recognizance required in error, see Dugdale *v.* The Queen, 1 Dearsley's C. C. R. 254.

elonies, they are only allowed *ex gratiâ*, and not without express warrant under the sign manual, or at least by the consent of the attorney-general (*k*).

When the judgment is reversed upon a writ of error in any criminal case, the statute 11 & 12 Vict. c. 78, provides that it shall be competent to the court of error either to pronounce the proper judgment itself, or to remit the record to the court below, in order that that court may pronounce the proper judgment (*l*). And if the judgment be affirmed, or the writ quashed, then by 16 & 17 Vict. c. 32, s. 4, the court may forthwith commit the plaintiff in error to prison, if then present in court: or if he be not present, then by sect. 5 of the same Act, on its being made to appear to a judge that the recognizances have been estreated, and that default has been made for the space of four days in rendering him to prison,—such judge may issue his warrant for his apprehension.

[The effect of falsifying or reversing an *outlawry* is, that the party shall be in the same plight as if he had appeared upon the *capias*; and if it be before plea pleaded, he shall be put to plead to the indictment: if after conviction, he shall receive the sentence of the law; for all the other proceedings, except only the process of outlawry for his nonappearance, remain good and effectual as before. But when judgment pronounced upon *conviction* is falsified or reversed, all former proceedings are absolutely set aside, and the party stands as if he had never been at all accused. But he still remains liable to another prosecution for the same offence; for the first being erroneous, he never was in jeopardy thereby.]

(*k*) See 1 Vern. 170, 175. See a modern instance of a writ of error after a judgment in a case of murder. Mansell *v.* The Queen, 8 Ell. & Bl. 54.

(*l*) As to the construction of this statute, see per Lord Campbell, in the case of Holloway *v.* The Queen, 17 Q. B. 327.

CHAPTER XXV.

OF REPRIEVE AND PARDON.

I. [A reprieve, from *reprendre*, to take back, is the withdrawing of a sentence for an interval of time; whereby the execution of a criminal is suspended (*a*).

This may be, in the first place, *ex mandato regis*, that is, the mere pleasure of the Crown, expressed to the court by which execution is to be awarded (*b*).

Again, there may be a reprieve *ex arbitrio judicis*; either before or after judgment; as where the judge is not satisfied with the verdict, or the evidence is suspicious or the indictment is insufficient, or sometimes if any favourable circumstances appear in the criminal's character,—in order to give room to apply to the Crown for either an absolute or conditional pardon. These arbitrary reprieves may be granted or taken off by the justices of gaol delivery, although their session be finished, and their commission expired; but this rather by common usage, than of strict right (*c*).

Reprieves may also be *ex necessitate legis*; as, where a woman is capitally convicted, and pleads her pregnancy; though this is no cause to stay the judgment; yet it is to respite the execution till she be delivered. This is a mercy dictated by the law of nature, *in favorem prolis*;

(*a*) Vide sup. p. 344. It may deserve remark, in reference to such portions of the present chapter as are taken from Blackstone, that he is speaking chiefly of a judgment *of death*,—in his time (as observed elsewhere in this work) of far more frequent occurrence than at the present day.

(*b*) 1 Hale, P. C. 368; 2 Hale, P. C. 412; Hawk. P. C. b. 2, c. 51, s. 8.

(*c*) 2 Hale, P. C. 412.

[and therefore no part of the bloody proceedings, in the reign of queen Mary, hath been more justly detested than the cruelty that was exercised in the island of Guernsey, of burning a woman big with child; and when, through the violence of the flames, the infant sprang forth at the stake, and was preserved by the by-standers, after some deliberation of the priests who assisted at the sacrifice, they cast it again into the fire as a young heretic (*d*). A barbarity which they never learned from the laws of *antient* Rome; which direct, with the same humanity as our own, "*quod prægnantis mulieris damnatæ pœna differatur, quoad pariat*" (*e*): which doctrine has also prevailed in England, as early as the first memorials of our law will reach (*f*). In case this plea be made in stay of execution, the judge must direct a jury of twelve matrons or discreet women to inquire the fact; and if they bring in their verdict *quick with child*, (for, barely *with child*, unless it be alive in the womb, is not sufficient,) execution shall be stayed generally till the next session; and so from session to session, till either she is delivered, or proves by the course of nature not to have been with child at all. But if she once hath had the benefit of this reprieve, and been delivered, and afterwards becomes pregnant again, she shall not be entitled to the benefit of a further respite for that cause (*g*). For she may now be executed before the child is quick in the womb: and shall not, by her own incontinence, evade the sentence of justice.

Another cause of regular reprieve is, if the offender become *non compos*, between the judgment and the award of execution (*h*); for by the common law, on which, as formerly shown, some new provisions have now been engrafted by the legislature, though a man be *compos* when he commits a capital crime, yet if he becomes *non*

(*d*) Fox, Acts and Mon.
(*e*) Ff. 48, 19, 3.
(*f*) Flet. l. 1, c. 38.
(*g*) 1 Hale, P. C. 369.
(*h*) Ibid. 370.

[*compos* after, he shall not be indicted; if after indictment, he shall not be convicted; if after conviction, he shall not receive judgment; if after judgment, he shall not be ordered for execution; if after such order, it shall not be carried out: for "*furiosus solo furore punitur;*" and the law knows not but he might have offered some reason, if in his senses, to have stayed these respective proceedings (*k*). It is, therefore, the rule to demand of the prisoner, after he has been found guilty, what he hath to allege, why execution should not be awarded against him; and if he then appears to be insane, the judge in his discretion may and ought to reprieve him. Or, he may *plead* in bar of execution; which plea may be either pregnancy, the royal pardon, an act of grace, or diversity of person. In the last case a jury shall be empanelled to try this collateral issue,—viz. the identity of his person;—and not whether guilty or innocent; for that has been decided before. And, in these collateral issues, the trial shall, as the general rule, take place forthwith (*l*); and no peremptory challenges of the jury shall be allowed the prisoner (*m*); though at one time such challenges were held to be allowable wherever a man's life was in question (*n*).

II. If neither pregnancy, insanity, non-identity, nor other plea will avail to avoid the judgment, and stay the execution consequent thereupon, the last and surest resort is in the sovereign's most gracious *pardon;* the granting of which is the most amiable prerogative of the Crown. Law, says an able writer, cannot be framed on principles of compassion to guilt: yet justice, by the constitution of England, is bound to be administered in mercy: this is promised by the sovereign in his coronation oath; and it

(*k*) Vide sup. pp. 26, 27.

(*l*) See R. *v.* Corbet, 1 Sid. 72; Fost. 42.

(*m*) R. *v.* Okey, 1 Lev. 61; Fost. 42, 46.

(*n*) Staundf. P. C. 168; Co. Litt. 157; Hal. Sum. 259.

[is that act of his government which is the most personal, and most entirely his own (*o*). The king himself condemns no man; that rugged task he leaves to his courts of justice; the great operation of his sceptre is mercy. His power of pardoning was said, by our Saxon ancestors, to be derived *a lege suæ dignitatis* (*p*); and it is declared in parliament, by statute 27 Hen. VIII. c. 24, that no other person hath power to pardon or remit any treason or felonies whatsoever; but that the king hath the whole and sole power thereof, united and knit to the imperial crown of this realm (*q*).

It is indeed one of the great advantages of monarchy, in general, above any other form of government, that there is a magistrate who has it in his power to extend mercy, wherever he thinks it is deserved: holding a court of equity in his own breast, to soften the rigour of the general law, in such criminal cases as merit an exemption from punishment. Pardons, (according to some theorists,) should be excluded in a perfect legislation, where punishments are mild but certain: for the clemency of the prince seems a tacit disapprobation of the laws (*r*). But the exclusion of pardons would, of necessity, introduce a very dangerous power in the judge or jury, namely, that of construing the criminal law by the spirit instead of the letter (*s*); or else it must be holden, what no man will seriously avow, that the situation and circumstances of the offender, though they alter not the essence of the crime, ought to make no distinction in the punishment. In de-

(*o*) Law of Forfeit. 99. In our own times, the exercise of this royal prerogative has in some measure devolved on the responsible advisers of the Crown; and in practice is a branch of the office of the secretary of state for the home department, on whose recommendation her Majesty usually acts in particular cases brought before her.

(*p*) Wilk. Leg. Ang. Sax. LL. Edw. Conf. c. 18.

(*q*) It is laid down that this power belongs only to a king *de facto*, and not to a king *de jure* during the time of usurpation. (Bro. Abr. t. Charter de Pardon, 22.)

(*r*) Beccar. c. 20.

(*s*) Beccar. c. 4.

[mocracies, however, this power of pardon can never subsist; for there, nothing higher is acknowledged than the magistrate who administers the laws; and it would be impolitic for the power of judging and of pardoning to centre in one and the same person. This, as the president Montesquieu observes, would oblige him very often to contradict himself, to make and to unmake his decisions: it would tend to confound all ideas of right among the mass of the people; as they would find it difficult to tell whether a prisoner were discharged by his innocence, or obtained a pardon through favour (*t*). But in monarchies the sovereign acts in a superior sphere; and though he regulates the whole government as the first mover, yet he does not appear in any of the disagreeable or invidious parts of it. Whenever the nation see him personally engaged, it is only in works of legislature, magnificence, or compassion. To him, therefore, the people look up as the fountain of nothing but bounty and grace; and these repeated acts of goodness, coming immediately from his own hand, endear him to his subjects; and contribute more than anything to root in their hearts that filial affection and personal loyalty, which are the sure establishment of a prince.

Under this head of pardons let us briefly consider—First, the *subject* of pardon. Secondly, the *manner* of pardoning. Thirdly, the method of *allowing* a pardon. Fourthly, the *effect* of such pardon when allowed.

And, first, the sovereign may pardon all offences merely against the Crown or the public, excepting—1. That, to preserve the liberty of the subject, the committing any man to prison out of the realm, is by the Habeas Corpus Act, 31 Car. II. c. 2, made a *præmunire*, unpardonable even by the king. Nor—2. Can the king pardon, where private justice is principally concerned in the prosecution of offenders; "*non potest rex gratiam facere cum injuriâ et damno aliorum*" (*u*). For example, he cannot pardon

(*t*) Sp. L. b. 6, c. 5. (*u*) 3 Inst. 236.

[a common nuisance, while it remains unredressed, or so as to prevent an abatement of it; though afterwards he may remit the fine: and this, because though the prosecution is vested in the king to avoid multiplicity of suits, yet, during its continuance, this offence savours more of the nature of a *private* injury to each individual in the neighbourhood, than of a *public* wrong (*x*).] It may be noticed, that by 22 Vict. c. 32, her Majesty is now expressly enabled to remit, wholly or in part, any sum of money which under any Act may be imposed upon a convicted offender, although such money may be wholly or in part payable to some party other than the Crown; and, if such offender has been imprisoned in default of payment, may nevertheless extend to him the royal mercy (*y*).

[There is also a restriction of a peculiar nature, that affects the prerogative of pardoning, in case of parliamentary impeachments, viz. that the king's pardon cannot be *pleaded* to any such impeachment, so as to impede the inquiry, and stop the prosecution of great and notorious offenders. Therefore when, in the reign of Charles the second, the Earl of Danby was impeached by the house of commons of high treason and other misdemeanors, and pleaded the king's pardon in bar of the same, the commons alleged, "that there was no precedent that ever any "pardon was granted to any person impeached by the "commons of high treason, or other high crimes, *depend-*"*ing the impeachment*" (*z*); and thereupon resolved, "that "the pardon so pleaded was illegal and void, and ought "not to be allowed *in bar* of the impeachment of the "commons of England" (*a*); for which resolution they assigned this reason to the house of lords; "that the set-"ting up a pardon to be a *bar* of an impeachment defeats

(*x*) Hawk. P. C. b. 2, c. 37, s. 33.

(*y*) See also 24 & 25 Vict. c. 96, s. 109, c. 97, s. 67, as to the remission of penalties imposed on a *summary conviction*, for offences made so punishable under those Acts.

(*z*) Com. Journ. 28 April, 1679.

(*a*) Ibid. 5 May, 1679.

[" the whole use and effect of impeachments; for should " this point be admitted or stand doubted, it would totally " discourage the exhibiting any for the future, whereby " the chief institution for the preservation of the govern- " ment would be destroyed" (*b*). And soon after the revolution, the commons renewed the same claim, and voted " that a pardon is not pleadable in bar of an impeach- " ment" (*c*): and at length it was enacted by the Act of Settlement, 12 & 13 Will. III. c. 2, " that no pardon " under the Great Seal of England shall be pleadable to " an impeachment by the commons in parliament" (*d*). But after the impeachment has been solemnly heard and determined, it is not understood that the king's royal grace is further restrained or abridged; for after the impeachment and attainder of the six rebel lords in 1715, three of them were from time to time reprieved by the Crown, and at length received the benefit of the king's most gracious pardon (*e*).]

(*b*) Com. Journ. 26 May, 1679.

(*c*) Ibid. 6 June, 1689.

(*d*) See Hallam's Const. Hist. vol. 2, p. 411, 7th ed.

(*e*) The following remarkable record, in which it is both acknowledged by the commons and asserted by the sovereign,—proves that the king's prerogative to pardon delinquents convicted in impeachments is as antient as the constitution itself.

" *Item prie la commune a nostre dit seigneur le roi, que nul pardon soit grante a nully persone, petit ne grande, q'ont este de son counseil et serementez, et sont empeschez en cest present parlement de vie ne de membre, fyn ne de raunceon, de forfaiture des terres, tenemenz, biens, ou chateux, lesqueux sont ou serront trovez en aucun defaut encontre leur ligeance, et la tenure de leur dit serement; mais q'ils ne serront jammes conseillers ne officers du roi, mais en tout oustez de la courte le roi et de conseil as touz jours. Et sur ceo soit en present parlement fait estatut s'il plest au roi, et de touz autres en temps a venir en cas semblables, pur profit du roi et de roialme.*

" *Responsio: Le roi ent fra sa volonte, come mieltz lui semblera.*" —Rot. Parl. 50 Edw. 3, n. 188.

After the lords have delivered their sentence of guilty, the commons have the power of pardoning the impeached convict, by refusing to demand judgment against him; for no judgment can be pronounced by the lords till it is demanded by the commons. Lord Macclesfield was found guilty without a dissenting voice in the house of Lords; but when the question was afterwards proposed in the house of commons,

Secondly, as to the *manner* of pardoning. 1. First, it must be by warrant under the great seal, or under the sign-manual. A warrant, indeed, under the sign-manual was formerly held not competent to confer a complete irrevocable pardon (*f*). But now by 7 & 8 Geo. IV. c. 28, s. 13, where the Crown shall be pleased to extend the royal mercy to any offender convicted of any capital or other felony, and by warrant under the royal sign-manual, (countersigned by a principal secretary of state,) shall grant to him either a free or a conditional pardon; the discharge of such offender out of custody, in the case of a free pardon, and the performance of the condition, in the case of a conditional pardon, shall have the effect of his pardon under the great seal as to the felony for which such pardon shall be granted, subject, however, to a proviso, that such discharge or performance shall have no effect to prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction, for any felony committed after the granting of any such pardon. There may also be a constructive pardon without warrant, by the mere endurance of the appropriate punishment. For, by 9 Geo. IV. c. 32, s. 3,—reciting that it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged,—it is enacted, that where any offender shall be convicted of any felony not punishable with death, and shall endure the punishment

that this house will demand judgment of the lords against Thomas earl of Macclesfield, it occasioned a warm debate, but (the previous question being first moved) it was carried in the affirmative by a majority of 136 voices against 65. (Comm. Journ. 27 May, 1725; 6 H. St. Tr. 762.) In the impeachment of Warren Hastings it was decided, after much serious and learned investigation and discussion, by a very great majority in each house of parliament, that an impeachment was not abated by a dissolution of the parliament; though almost all the legal characters of each house voted in the minorities.

(*f*) 4 Bl. Com. 400. Blackstone cites 5 St. Tr. 166, 173.

to which he hath been adjudged for the same, the punishment so endured shall have the like effects and consequences as a pardon under the Great Seal, as to the felony whereof the offender was so convicted; subject, however, to a proviso, that it shall not prevent or mitigate any punishment to which he might otherwise be lawfully sentenced on a subsequent conviction for any other felony. 2. [Next, it is a general rule, that whenever it may reasonably be presumed the king is deceived, the pardon is void (*g*). Therefore any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole; for the king was misinformed (*h*). 3. General words have also a very imperfect effect in pardons. A pardon of "all felonies," will not pardon a conviction for felony already had, (for it is presumed the king knew not of those proceedings); but the conviction must be particularly mentioned (*i*). And it is said, that a pardon of *felonies* will not include piracy (*k*); for that is no felony punishable at the common law, having been cognizable only in the Court of Admiralty, until brought within the jurisdiction of the ordinary courts by Act of Parliament (*l*). 4. It is also enacted by statute 13 Rich. II st. 2, c. 1, that no pardon for treason, murder, or rape, shall be allowed, unless the offence be particularly specified therein (*m*); and that, in a case of murder, it shall be expressed whether it was committed by lying in wait,

(*g*) Hawk. P. C. b. 2, c. 37, s. 8.

(*h*) 3 Inst. 238; Hawk. P. C. b. 2, c. 37, s. 46.

(*i*) Hawk. ubi sup. s. 8. Hawkins says (ubi sup. s. 9), that it is taken for granted in many books, that felonies in general (exclusive of treason, murder and rape) may be pardoned under the general words "all felonies;" but he holds this doctrine to be doubtful, and says that general pardons are commonly made by Act of Parliament, and have been rarely granted by the Crown.

(*k*) Hawk. P. C. b. 1, c. 37, s. 6; b. 2, c. 37, s. 11; Co. Litt. 391 a; 3 Inst. 112.

(*l*) Vide sup. p. 311.

(*m*) A form of pardon, in a modern case, in which the person pardoned had been guilty of the offence of bribery at a parliamentary election, will be found in The Queen *v.* Boyes, 1 B. & Smith, 319.

[assault or malice prepense. Upon which Sir Edward Coke observes, that it was not the intention of the parliament, that the king should ever pardon murder under these aggravations; and therefore they prudently laid the pardon under these restrictions, because they did not conceive it possible that the king would ever excuse an offence by name, which was attended with such high aggravations (*n*). Yet pardons for such murders have been frequently granted since that period, and even under the general description of a felonious killing, there being always inserted therein, until the time of the revolution, a *non obstante* of the statute of king Richard (*o*). But it being declared by the Bill of Rights, 1 W. & M. sess. 2, c. 2, that no dispensation by *non obstante* of any statute shall be thenceforth allowed, such general description would now seem to be insufficient (*p*). Under these and a few other restrictions, it is a general rule, that a pardon shall be taken most beneficially *for* the subject and most strongly *against* the king (*q*).]

A pardon may also be *conditional;* that is, the sovereign may extend his mercy upon what terms he pleases, and may annex to his bounty a condition, on the performance whereof the validity of the pardon will depend (*r*). And this prerogative is exerted in the pardon of an offender sentenced to death,—a usual condition in such cases being, imprisonment with or without hard labour for a stated time, or penal servitude for life, or for a term of years (*s*).

(*n*) 3 Inst. 236.

(*o*) Hawk. P. C. b. 2, c. 37, s. 17. It was once made a question, whether murder can be the subject of a pardon under any form of words; and to this point the statutes 6 Edw. 1, st. 1, c. 9; 2 Edw. 3, c. 2, and 14 Edw. 3, st. 1. c. 15, have been cited. But it is now settled that the pardon of murder is as much within the prerogative of the Crown, as the pardon of any other offence. (R. v. Parsons, 1 Show. 283; 2 Salk. 499; 4 Mod. 61; 3 Inst. 236; Hawk. P. C. b. 2, c. 37, s. 14.)

(*p*) Hawk. P. C. b. 2, c. 37, s. 17.

(*q*) 4 Rep. 49 b.

(*r*) Hawk. P. C. b. 2, c. 37, s. 45.

(*s*) By 5 Geo. 4, c. 84, it is enacted, that whenever the Crown shall be pleased to extend mercy to an offender convicted of a capital

[Thirdly, with regard to the manner of *allowing* pardons, we may observe, that a pardon by Act of Parliament is more beneficial than by the king's charter; for a man is not bound to plead it, but the court must *ex officio* take notice of it(*u*); neither can he lose the benefit of it by his own *laches* or negligence, as he may of the king's charter of pardon (*x*). The king's charter of pardon must be specially pleaded, and that at a proper time; for if a man is indicted, and has a pardon in his pocket, and afterwards puts himself upon his trial by pleading not guilty, he has waived the benefit of such pardon (*y*). But if a man avails himself thereof, as soon as by course of law he may, a pardon may (as explained in a former place) either be pleaded upon arraignment, or in arrest of judgment, or in bar of execution (*z*). Antiently, by stat. 10 Edw. III. c. 2, no pardon of felony could be allowed unless the party found sureties for his good behaviour, before the sheriff and coroners of the county (*a*). But that statute is repealed by the statute 5 & 6 W. & M. c. 13; which, instead thereof, gives the judges of the court a discretionary power to bind the criminal, pleading such pardon, to his good behaviour, with two sureties, for any term not exceeding seven years.

Fourthly, the *effect* of such pardon by the king is to make the offender a new man: to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains his pardon; and not so much to restore his former, as to give him new credit and capacity (*b*).] And

crime on condition of his transportation beyond the seas, such offender shall be allowed the benefit of a conditional pardon, and an order shall be made by the court for his immediate transportation. And by 20 & 21 Vict. c. 3, whenever mercy shall be so extended on condition of his being kept in *penal servitude*, such extension of mercy shall have the same effect, as formerly in the case of the condition being transportation beyond seas. See also 6 Geo. 4, c. 25, s. 1; 6 & 7 Vict. c. 7, and 16 & 17 Vict. c. 99.

(*u*) Fost. 43.
(*x*) Hawk. P. C. b. 2, c. 37, s. 59.
(*y*) Hawk. P. C. b. 2, c. 37, s. 67.
(*z*) Vide sup. p. 404.
(*a*) R. v. Parsons, 1 Show. 283.
(*b*) Hawk. P. C. b. 2, c. 37, s. 48.

it seems to be settled that the pardon of treason or felony will enable a man to have an action of slander against any one who shall thenceforth call him either traitor or felon (*c*): and, also, that, on accepting a pardon from the Crown, the offender cannot refuse to give evidence respecting the offence pardoned, on the ground of possible danger to himself therefrom if he should be afterwards impeached for the same offence by the House of Commons—unless, indeed, there should be in fact some reasonable ground for his apprehension that such a proceeding is impending (*d*).

(*c*) Hawk. P. C. b. 2, c. 37, s. 48.
(*d*) The Queen *v.* Boyes, 1 B. & Smith, 34.

CHAPTER XXVI.

OF EXECUTION.

[THERE now remains nothing to speak of but *execution*—the completion of human punishment (*a*). And this, must be performed by the legal officer, that is, the sheriff or his deputy; whose warrant for so doing was antiently by precept under the hand and seal of the judge, as it is still practised in the court of the lord high steward upon the execution of a peer (*b*): though, in the court of the peers in parliament, it is done by writ from the king. But afterwards it was established, that in case of life, the judge may command execution to be done without any writ (*c*). And now the usage is, for the judge, in the case of trials at the assizes, to sign the calendar, or list of all the prisoners' names, with their separate judgments in the margin, which is left with the sheriff as his warrant or authority; and, if the sheriff receives afterwards no special order to the contrary, he executes the judgment of the law accordingly (*d*).

(*a*) Vide sup. p. 344 and 466, n. (*a*).

(*b*) 2 Hale, P. C. 409.

(*c*) Finch, L. 478.

(*d*) See R. *v.* Bethel, 5 Mod. 22; Christian's Blackstone, vol. iv. p. 404, *in notis*, where it is said that, "at "the end of the assizes the clerk of "the assize makes out in writing "four lists of all the prisoners, with "separate columns, containing their "crimes, verdicts and sentences, "leaving a blank column, which the "judge fills up opposite the names "of the capital convicts by writing "*to be reprieved, respited, transported*, &c. These four calendars, "being first carefully compared together by the judge and the clerk "of assize, are signed by them, and "one is given to the sheriff, one to "the gaoler, and the judge and the "clerk of assize each keep another. "If the sheriff receives afterwards "no special order from the judge, "he executes the judgment of the "law in the usual manner, agreeably "to the directions of his calendar. "In every county this important "subject is settled with great deliberation by the judge and the

[The sheriff, upon receipt of his warrant, is to do execution within a convenient time; which is left at large (*e*). But in the Queen's Bench, if the prisoner be tried at the bar, or brought there by *habeas corpus*, a rule is made for the execution; either specifying the time or leaving it to the discretion of the sheriff (*f*). And though in general the law has established no rule as to the time of execution after judgment, it has been well observed, that it is of great importance that the punishment should follow the crime as early as possible; and that the prospect of gratification or advantage which tempts a man to commit the crime, should instantly awake the attendant idea of punishment (*g*).

The sheriff cannot alter the manner of the execution, by substituting one death for another, without being guilty of felony himself, as has been formerly said (*h*). It was held also by Sir Edward Coke (*i*) and Sir Matthew Hale (*k*), that even the king could not change the punishment of the law, by altering hanging or burning into beheading; though, when beheading was part of the sentence, the king might remit the rest. And, notwith-

" clerk of assize before the judge " leaves the assize town; but pro- " bably in different counties with " some slight variations."

(*e*) The *time* of the execution is by law no part of the judgment (see 4 Bl. Com. 404, where this is said to have been held by the twelve judges, Mich. 10 Geo. 3). As to the *place* of execution it is now, in all executions for *murder*, required by the 31 Vict. c. 24, to be within the walls of the prison in which he shall be confined at the time of execution (vide sup. p. 76).

(*f*) St. Trials, vi. 332; Fost. 43. See Atkinson *v.* Reg. (in error), 3 Bro. P. C. 517; Mansell *v.* The Queen, 8 Ell. & Bl. p. 84.

It may be remarked that in London the course as to execution on convicts formerly was, that the recorder reported to the king, in person, their several cases; and, if he received the royal pleasure that the law must take its course, issued his warrant to the sheriffs, directing them to do execution at a specified time and place (4 Bl. Com. 404.) But now by 7 Will. 4 & 1 Vict. c. 77, the practice of the Central Criminal Court, as to the award of execution in capital cases, is assimilated to that of other courts.

(*g*) Beccar. c. 19.

(*h*) Vide sup. p. 49.

(*i*) 3 Inst. 52.

(*k*) 2 Hale, P. C. 412.

[standing some examples to the contrary, Sir Edward Coke stoutly maintains, that "*judicandum est legibus, non exemplis.*" But others have thought that this prerogative, being founded in mercy, and immemorially exercised by the Crown, was part of the common law (*l*). It is observable, that when Lord Stafford was executed for the popish plot in the reign of King Charles the second, the then sheriffs of London, having received the king's writ for beheading him, petitioned the house of lords for a command or order from their lordships how the said judgment should be executed; for, he being prosecuted by impeachment, they entertained a notion, (which is said to have been countenanced by Lord Russell,) that the king could not pardon any part of the sentence (*m*). The lords however resolved, that the scruples of the sheriffs were unnecessary, and declared that the king's writ ought to be obeyed (*n*). Disappointed of raising a flame in that assembly, they immediately signified to the house of commons, by one of the members, that they were not satisfied as to the power of the said writ (*o*). That house took two days to consider of it; and then sullenly resolved, that the house was *content* that the sheriff do execute Lord Stafford by severing his head from his body (*p*). It is further related, that when afterwards the same Lord Russell was condemned for high treason upon indictment, the king, while he remitted the ignominious part of the sentence, observed, "that his lordship would "now find he was possessed of that prerogative which, in "the case of Lord Stafford, he had denied him" (*q*). One can hardly determine (at this distance from those turbulent times) which most to disapprove of; the indecent and sanguinary zeal of the subject, or the cool and cruel sarcasm of the sovereign.

(*l*) Fost. 270; F. N. B. 144, h; 19 Rym. Fœd. 284.
(*m*) 2 Hume, 328.
(*n*) Lords' Journ. 21 Dec. 1680.
(*o*) Com. Journ. 21 Dec. 1680.
(*p*) Com. Journ. 23 Dec. 1680.
(*q*) 2 Hume, 360.

[To conclude: it is clear, that if, upon judgment to be hanged by the neck till he is dead, the criminal be not thoroughly killed, but revives, the sheriff must hang him again (*r*). For the former hanging was no execution of the sentence; and if a false tenderness were to be indulged in such cases, a multitude of collusions might ensue. Nay, even while abjurations were in force, such a criminal, so reviving, was not allowed to take sanctuary and abjure the realm; but his fleeing to sanctuary was held an escape in the officer (*s*).]

And, having thus arrived at the *last* stage of criminal proceedings, or execution, which terminates our inquiry into the law of crimes, the subject of our sixth Book, we have also reached the end, properly speaking, of these Commentaries; yet it may be useful to endeavour to recall to the memory of the student some principal outlines of the legal constitution of this country, by a short historical review of the most considerable revolutions, that have happened in the laws of England from the earliest to the present times: and this task shall be now attempted by way of conclusion.

(*r*) 2 Hale, P. C. 412; Hawk. P. C. b. 2, c. 51, s. 7.

(*s*) Fitzh. Abr. tit. "Corone," 335; Finch, L. 467. As to an escape, vide sup. p. 227.

CONCLUSION.

OF THE RISE, PROGRESS, AND GRADUAL IMPROVEMENT, OF THE LAWS OF ENGLAND.

[BEFORE we enter on our present subject, in which it is proposed, by way of supplement to the whole work, to attempt an historical review of the most remarkable changes and alterations that have happened in the laws of England,—it must be observed, that the rise and progress of many principal points and doctrines have been already pointed out in the course of these Commentaries, under their respective divisions; these having, therefore, been particularly discussed already, it cannot be expected that they should be re-examined with any degree of minuteness, which would be a most tedious undertaking. What, therefore, is at present proposed, is only to mark out some outlines of our English juridical history, by taking a chronological view of the state of our laws, and their successive mutations at different periods of time.

The several periods under which we shall consider the state of our legal policy, are the following: 1. From the earliest times to the Norman Conquest: 2. From the Norman Conquest to the reign of king Edward the first: 3. From thence to the reformation: 4. From the reformation to the restoration of king Charles the second: 5. From thence to the revolution in 1688:] 6. From the era last mentioned to the present time.

1. [And, first, with regard to the antient Britons, the *aborigines* of our island, we have so little handed down to us concerning them with any tolerable certainty, that

[our inquiries here must needs be very fruitless and defective. However, from Cæsar's account of the tenets and discipline of the antient Druids in Gaul, in whom centred all the learning of these western parts, and who were, as he tells us, sent over to Britain, (that is, to the island of Mona or Anglesea,) to be instructed,—we may collect a few points, which bear a great affinity and resemblance to some of the modern doctrines of our English law. Particularly the very notion itself of an oral unwritten law, delivered down from age to age by custom and tradition merely, seems derived from the practice of the Druids, who never committed any of their instructions to writing: possibly for want of letters: since it is remarkable that in all the antiquities, unquestionably British, which the industry of the moderns has discovered, there is not in any of them the least trace of any character or letter to be found. The partible quality also of lands, by the custom of gavelkind, which still obtains in many parts of England, and did universally over Wales till the reign of Henry the eighth, is undoubtedly of British original. So likewise is the antient division of the goods of an intestate between his widow and children, or next of kin; which has since been revived by the statute of distributions. And we may also remember an instance of a slighter nature mentioned in the present volume, namely, that of burning a woman guilty of the crime of petty treason by killing her husband (*a*).

The great variety of nations, that successively broke in upon and destroyed both the British inhabitants and constitution,—the Romans, the Picts, and, after them, the various clans of Saxons and Danes,—must necessarily have caused great confusion and uncertainty in the laws and antiquities of the kingdom, as they were very soon incorporated and blended together; and therefore, we may suppose, mutually communicated to each other their re-

(*a*) Vide sup. p. 77.

[spective usages, in regard to the rights of property and the punishment of crimes (*b*). So that it is morally impossible to trace out with any degree of accuracy, *when* the several mutations of the common law were made, or what was the respective original of those several customs we at present use, by any chemical resolution of them to their first and component principles (*c*). We can seldom pronounce, that *this* custom was derived from the Britons; *that* was left behind by the Romans; *this* was a necessary precaution against the Picts; *that* was introduced by the Saxons; discontinued by the Danes, but afterwards restored by the Normans.

Wherever this can be done, it is a matter of great curiosity, and some use: but this can very rarely be the case; not only from the reason above mentioned, but also from many others. First, from the nature of traditional laws in general; which, being accommodated to the exigencies of the times, suffer by degrees insensible variations in practice (*d*); so that, though upon comparison we plainly discern the alteration of the law from what it was five hundred years ago, yet it is impossible to define the precise period in which that alteration accrued, any more than we can discern the changes of the bed of a river, which varies its shores by continual decreases and alluvions. Secondly, this becomes impracticable from the antiquity of the kingdom and its government: which alone, though it had been disturbed by no foreign invasions, would make it impossible to search out the original of its laws; unless we had as authentic monuments thereof, as the Jews had by the hand of Moses (*e*). Thirdly, this uncertainty of the true origin of particular customs must also in part have arisen from the means whereby Christianity was propagated among our Saxon ancestors

(*b*) Hale, Hist. C. L. 62.

(*c*) "It is an impossible piece of "chemistry," says Hale, "to reduce "every *caput legis* to its true origi- "nal, &c."—Hale, ubi sup. 64.

(*d*) Hale, ubi sup. 57.

(*e*) Hale, ubi sup. 59.

[in this island—by learned foreigners brought over from Rome and other countries, who undoubtedly carried with them many of their own national customs; and probably prevailed upon the state to abrogate such usages as were inconsistent with our holy religion, and to introduce many others that were more conformable thereto. And this perhaps may have partly been the cause, that we find not only some rules of the Mosaical, but also of the imperial and pontifical laws, blended and adopted into our own system.

A further reason may also be given for the great variety, and of course the uncertain original, of our antient established customs; even after the Saxon government was firmly established in this island: viz. the subdivision of the kingdom into many independent kingdoms, peopled and governed by different clans and colonies (*f*). This must necessarily create an infinite diversity of laws: even though all those colonies, of Jutes, Angles, Anglo-Saxons, and the like, originally sprung from the same mother-country, the great northern hive; which poured forth its warlike progeny, and swarmed all over Europe, in the sixth and seventh centuries. This multiplicity of laws will necessarily be the case in some degree, where any kingdom is cantoned out into provincial establishments: and not under one common dispensation of laws, though under the same sovereign power. Much more will it happen where so many unconnected states are to form their own constitution and superstructure of government, though they all begin to build upon the same or similar foundations.

(*f*) It has been strangely supposed from the above passage, by a writer who has paid some attention to historical research (see Growth of the English Constitution, &c., by E. J. Freeman, note, 31), that Blackstone was ignorant of the *progressive* way in which England became reduced under the dominion of the several Teutonic tribes by whom it was invaded. There is, however, no reason to believe that his views on this subject were otherwise than correct.

[When therefore the West Saxons had swallowed up all the rest, and King Alfred succeeded to the monarchy of England, whereof his grandfather Egbert was the founder, his mighty genius prompted him, we are told, to undertake a most great and necessary work, which he is said to have executed in as masterly a manner; no less than to new model the constitution; to rebuild it on a plan that should endure for ages, and out of its old discordant materials, which were heaped upon each other in a vast and rude irregularity, to form one uniform and well-connected whole. This he effected by reducing the whole kingdom under one regular and gradual subordination of government, wherein each man was answerable to his immediate superior for his own conduct and that of his nearest neighbours; for to him we owe that masterpiece of judicial policy, the subdivision of England into tithings and hundreds, if not into counties, all under the influence and administration of one supreme magistrate the king: in whom, as in a general reservoir, all the executive authority of the law was lodged, and from whom justice was dispersed to every part of the nation by distinct, yet communicating ducts and channels; which wise institution has been preserved for near a thousand years unchanged, from Alfred's to the present time. He also, like another Theodosius, collected, it is said, the various customs that he found dispersed in the kingdom, and reduced and digested them into one uniform system or code of laws, in his dom-bec, or *liber judicialis*. This he compiled for the use of the court-baron, the hundred court, the sheriff's county court, the court-leet, and the sheriff's tourn: tribunals which he established for the trial of all causes civil and criminal, in the very districts wherein the complaint arose: all of them subject however to be inspected, controlled and kept within the bounds of the universal or common law by the king's own courts, which were then itinerant, being kept in the king's palace, and removing with his household in those royal progresses, which he

[continually made from one end of the kingdom to the other (*f*).

The Danish invasion and conquest, which introduced new foreign customs, was a severe blow to this noble fabric, but a plan so excellently concerted could never be long thrown aside. So that upon the expulsion of these intruders, the English returned to their antient law, retaining however some few of the customs of their late visitants, which went under the name of *Dane Lage*, as the code compiled by Alfred was called the *West-Saxon Lage*; and the local constitutions of the antient kingdom of Mercia, which obtained in the counties nearest to Wales and probably abounded with many British customs, were called the *Mercen Lage*. And these three laws were, about the beginning of the eleventh century, in use in different counties of the realm: the provincial policy of counties and their subdivisions having never been altered or discontinued through all the shocks and mutations of government, from the time of its first institution: though the laws and customs therein used have, as we shall see, often suffered considerable changes.

For King Edgar, (who besides his military merit as founder of the English navy, was also a most excellent civil governor,) observing the ill effects of three distinct bodies of laws, prevailing at once in separate parts of his dominions, projected and begun what his grandson King Edward the Confessor afterward completed: viz. one uniform digest or body of laws to be observed throughout the whole kingdom, being probably no more than a revival of King Alfred's code, with some improvements suggested by necessity and experience; particularly the incorporating some of the British or rather Mercian customs, and also such of the Danish as were reasonable and approved, into the *West-Saxon Lage*, which was still the ground-

(*f*) As to the claim of Alfred to the institutions mentioned in the text, see Turner's Hist. of the Anglo-Saxons, vol. ii. p. 149, 6th ed.; Hallam's Middle Ages, vol. ii. pp. 390, 402, 7th ed.

[work of the whole. And this appears to be the best supported and most plausible conjecture, (for certainty is not to be expected,) of the rise and original of that admirable system of maxims and unwritten customs, which is now known by the name of the common law, as extending its authority universally over all the realm, and which is doubtless of Saxon parentage.

Among the most remarkable of the Saxon laws we may reckon, 1. The constitution of parliament, or rather general assemblies of the principal and wisest men in the nation; the *wittenagemote* or *commune consilium* of the antient Germans, which was not yet reduced to the forms and distinctions of our modern parliament, without whose concurrence, however, no new law could be made or old one altered. 2. The election of their magistrates by the people; originally even that of their kings, till dear-bought experience evinced the convenience and necessity of establishing an hereditary succession to the crown. But that of all subordinate magistrates,—their military officers or heretochs, their sheriffs, their conservators of the peace, their coroners, their portreeves (since changed into mayors and bailiffs), and even their tithingmen and borsholders at the leet,—continued, some till the Norman conquest, others for two centuries after, and some remain to this day. 3. The descent of the crown, when once a royal family was established, upon nearly the same hereditary principles upon which it has ever since continued; only that perhaps, in case of minority, the next of kin of full age would ascend the throne as king, and not as protector; though after his death, the crown immediately reverted back to the heir. 4. The great paucity of capital punishments for the first offence, even the most notorious offenders being allowed to commute it for a fine or *weregild*, or, in default of payment, perpetual bondage: to which, in subsequent times, the benefit of clergy in some measure succeeded. 5. The prevalence of certain customs—as heriots and military services in proportion to every man's

[land, which much resembled the feudal constitution, but yet were exempt from all its rigorous hardships; and which may be well enough accounted for by supposing them to be brought from the continent by the first Saxon invaders, in the primitive moderation and simplicity of the feudal law, before it got into the hands of the Norman jurists; who extracted the most slavish doctrines and oppressive consequences out of what was originally intended as a law of liberty. 6. The liability of their estates to forfeiture for treason, while the doctrine of escheats and corruption of blood for felony, or any other cause, was utterly unknown amongst them. 7. The descent of their lands to all the males equally, without any right of primogeniture: a custom which obtained among the Britons, was agreeable to the Roman law, and continued among the Saxons till the Norman conquest; though really inconvenient, and more especially destructive to antient families, which are in monarchies necessary to be supported, in order to form and keep up a nobility, or intermediate state between the prince and the common people. 8. The courts of justice—consisting principally of the sheriff's county court, and in cases of weight or nicety the king's court held before himself in person, at the time of his parliaments; which were usually holden in different places, according as he kept the three great festivals of Christmas, Easter, and Whitsuntide. An institution which was adopted by King Alonso the seventh, of Castile, about a century after the Conquest, who, at the same three great feasts, was wont to assemble his nobility and prelates in his court; who there heard and decided all controversies, and then, having received his instructions, departed home (*g*). In these antient courts the ecclesiastical and civil jurisdiction were blended together, the bishop and the sheriff originally sitting together, and the decisions and proceedings therein were simple and unembarrassed; an advantage which will always attend

(*g*) Mod. Un. Hist. xx. 114.

[the infancy of any laws, but wears off as they gradually advance to antiquity. 9. The modes of trial—which, among a people who had a very strong tincture of superstition, were permitted to be by *ordeal*, by the *corsned*, or morsel of execration, or by *wager of law* with compurgators. And to these may be added the occasional resort to modes of determining controversies, resembling, in some respects, the celebrated institution now known to us under the name of trial by jury (*i*). Thus stood the general frame of our policy at the time of the Norman invasion, when the second period of our legal history commences.

II. This remarkable event wrought as great an alteration in our laws, as it did in our antient line of kings; and though the alteration of the former was effected rather by the consent of the people, than by any right of conquest, yet that consent seems to have been partly extorted by fear, and partly given without any apprehension of the consequences which afterwards ensued.

1. Among the first of these alterations, we may reckon the separation of the ecclesiastical courts from the civil: effected in order to ingratiate the new king with the popish clergy, who for some time before had been endeavouring all over Europe to exempt themselves from the secular power; and whose demands the conqueror, like a politic prince, thought it prudent to comply with, by reason that their reputed sanctity had a great influence over the minds of the people, and because all the little learning of the times was engrossed into their hands, which made them necessary men, and by all means to be gained over to his interests; and this was the more easily effected, because the disposal of all the episcopal sees being then in the breast of the king, he had taken care to fill them with Italian and Norman prelates.

(*i*) See Turner's Hist. Ang. Sax. vol. iii. p. 223, 6th edit.; Hallam's Mid. Ag. vol. ii. p. 396, 7th ed.

[2. Another violent alteration of the English constitution consisted in the depopulation of whole counties for the purposes of the king's royal diversion, and subjecting both them, and all the antient forests of the kingdom, to the unreasonable severities of forest laws imported from the continent, whereby the slaughter of a beast was made almost as penal as the death of a man. And though these laws were mitigated in the time of Henry the third and in succeeding reigns,—yet, from this root afterwards sprung a bastard slip, known by the name of the game laws,] by which none were permitted, in general, to take or sell game, even on his own estate, unless qualified by the ownership of land to the yearly value of at least 100*l.*; an arbitrary restraint under which the subjects of this realm continued to labour, until its tardy abolition in the reign of William the fourth.

3. [A third alteration in the English laws was by narrowing the remedial influence of the sheriff's county court, the great seat of Saxon justice, and extending the *original* jurisdiction of the king's justiciars to all kinds of causes, arising in all parts of the kingdom. To this end the *aula regis*, with all its multifarious authority, was erected, and a capital justiciary appointed, with powers so large and boundless, that he became at length a tyrant to the people, and formidable to the Crown itself. The constitution of this court, and the judges themselves who presided there, were fetched from the duchy of Normandy; and the consequence naturally was, that all proceedings in the king's court were ordained to be carried on in the Norman instead of the English language: a provision necessary, indeed, because none of his Norman justiciars understood English: but as evident a badge of slavery as ever was imposed upon a conquered people. This lasted till King Edward the third obtained a double victory, over the armies of France in their own country, and the language in our courts here at home: but there was one mischief too deeply rooted thereby, and which this caution

[of King Edward came too late to eradicate. Instead of the plain and easy method of determining suits in the sheriff's county court, the chicanes and subtleties of Norman jurisprudence had taken possession of the king's courts, to which every cause of consequence was drawn. Indeed that age, and those immediately succeeding it, were the era of refinement and subtlety. There is an active principle in the human soul, that will ever be exerting its faculties to the utmost stretch, in whatever employment, by the accidents of time and place, the general plan of education, or the customs and manners of the age and country, it may happen to find itself engaged. The northern conquerors of Europe were then emerging from the grossest ignorance in point of literature; and those who had leisure to cultivate its progress were such only as were cloistered in monasteries, the rest being all soldiers or peasants; and unfortunately, the first rudiments of science which they imbibed were those of Aristotle's philosophy, conveyed through the medium of his Arabian commentators; which were brought from the East by the Saracens into Palestine and Spain, and translated into barbarous Latin. So that, though the materials upon which they were naturally employed, in the infancy of a rising state, were those of the noblest kind,—the establishment of religion, and the regulations of civil policy,—yet, having only such tools to work with, their execution was trifling and flimsy. Both the divinity and the law of those times were therefore frittered into logical distinctions, and drawn out into metaphysical subtleties, with a skill most amazingly artificial; but which serves no other purpose than to show the vast powers of the human intellect, however vainly or preposterously employed. Hence law in particular, which (being intended for universal reception) ought to be a plain rule of action, became a science of the greatest intricacy, especially when blended with the new refinements engrafted upon feudal property; which refinements were from time to time gradually intro-

[duced by the Norman practitioners, with a view to supersede (as they did in great measure) the more homely but more intelligible maxims of distributive justice among the Saxons. And, to say the truth, these scholastic reformers have transmitted their dialect and finesses to posterity, so interwoven in the body of our legal policy, that they cannot now be taken out without a manifest injury to the substance, unless the greatest care be used in the operation. Statute after statute has in later times been made to pare off these troublesome excrescences, and restore the common law to its pristine simplicity and vigour; and the endeavour has greatly succeeded; but still the scars are deep and visible; and the liberality of our modern courts of justice has been much called into action, in aid of the express enactments, in order to recover that equitable and substantial justice which for a long time was totally buried under the narrow rules and fanciful niceties of metaphysical and Norman jurisprudence.

4. A fourth innovation was the introduction of the trial by combat, for the decision of all civil and criminal questions of fact in the last resort. This was the immemorial practice of all the northern nations, but first reduced to regular and stated forms among the Burgundi, about the close of the fifth century; and from them it passed to other nations, particularly the Franks and the Normans; which last had the honour to establish it here, though clearly an unchristian, as well as most uncertain method of trial. But it was a sufficient recommendation of it to the conqueror and his warlike countrymen, that it was the usage of their native duchy of Normandy.

5. But the last and most important alteration, both in our civil and military policy, was the engrafting on all landed estates, a few only excepted, the fiction of feudal tenure, which drew after it a numerous and oppressive train of servile fruits and appendages: aids, reliefs, primer seisins, wardships, marriages, escheats and fines for alienation; the genuine consequences of the maxim then adopted,

[that all the lands in England were derived from and holden mediately or immediately of the Crown.

The nation at this period seems to have groaned under as absolute a slavery as was in the power of a warlike, an ambitious and a politic prince to create. The consciences of men were enslaved by sour ecclesiastics, devoted to a foreign power, and unconnected with the civil state under which they lived; who now imported from Rome for the first time the whole *farrago* of superstitious novelties, which had been engendered by the blindness and corruption of the times, between the first mission of Augustin the monk and the Norman conquest; such as transubstantiation, purgatory, communion in one kind, and the worship of saints and images; not forgetting the universal supremacy and dogmatical infallibility of the holy see. The laws, too, as well as the prayers, were administered in an unknown tongue. The antient trial by jury gave way to the impious decision by battle. The forest laws totally restrained all rural pleasures and manly recreations. And in cities and towns the case was no better; all company being obliged to disperse, and fire and candle to be extinguished, by eight at night, at the sound of the melancholy *curfew*. The ultimate property of all lands, and a considerable share of the present profits, were vested in the king, or by him granted out to his Norman favourites, who, by a gradual progression of slavery, were absolute vassals to the Crown, and as absolute tyrants to the commons. Unheard-of forfeitures, talliages, aids and fines were arbitrarily extracted from the pillaged landholders, in pursuance of the new system of tenure. And, to crown all, as a consequence of the tenure by knight service, the king had always ready at his command an army of sixty thousand knights or *milites:* who were bound, upon pain of confiscation of their estates, to attend him in time of invasion, or to quell any domestic insurrection. Trade, or foreign merchandise, such as it then was, was carried on by the Jews and Lombards; and the very name of an

[English fleet, which king Edgar had rendered so formidable, became utterly unknown to Europe: the nation consisting wholly of the clergy, who were also the lawyers; the barons or great lords of the land; the knights or soldiery, who were the subordinate landholders; and the burghers or inferior tradesmen, who, from their insignificancy, happily retained, in their socage and burgage tenure, some points of their antient freedom. All the rest were villeins or bondmen.

From so complete and well-concerted a scheme of servility, it has been the work of generations for our ancestors to redeem themselves and their posterity into that state of liberty which we now enjoy: which, therefore, is not to be looked upon as consisting of mere encroachments on the Crown, and infringements on the prerogative, as some slavish and narrow-minded writers have endeavoured to maintain: but as, in general, a gradual restoration of that antient constitution, whereof our Saxon forefathers had been unjustly deprived, partly by the policy, and partly by the force, of the Norman. How that restoration has in a long series of years been step by step effected, we now proceed to inquire.

William Rufus proceeded on his father's plan; and in some points extended it, particularly with regard to the forest laws. But his brother and successor, Henry the first, found it expedient, when first he came to the crown, to ingratiate himself with the people, by restoring (as our monkish historians tell us) the laws of king Edward the Confessor. The ground whereof is this: that by charter he gave up the great grievances of marriage, ward, and relief, the beneficial pecuniary *fruits* of his feudal tenures; but reserved the tenures themselves, for the same military purposes that his father introduced them. He also abolished the *curfew* (*k*); for, though it is mentioned in our laws a full century afterwards (*l*),

(*k*) Spelm. Cod. LL. W. 1, 288, (*l*) Stat. Civ. Lond. 13 Edw. 1. Hen. 1, 299.

[yet it is rather spoken of as a known *time* of night (so denominated from that abrogated usage) than as a still subsisting custom. There is extant a code of laws in his name, consisting partly of those of the Confessor, but with great additions and alterations of his own, and chiefly calculated for the regulation of the sheriff's county court. It contains some directions as to crimes and their punishments (that of theft being made capital in his reign), and a few things relating to estates, particularly as to the descent of lands; which, being by the Saxon laws equally to all the sons,—by the feudal or Norman to the eldest only,—King Henry here moderated the difference; directing the eldest son to have only the principal estate, "*primum patris feudum*," the rest of his estates, if he had any others, being equally divided among them all. On the other hand, he gave up to the clergy the free election of bishops and mitred abbots; reserving, however, the following ensigns of patronage,—*congé d'eslire*, custody of the temporalities when vacant, and homage upon their restitution. He, lastly, united again for a time the civil and ecclesiastical courts: which union was soon dissolved by his Norman clergy: and, upon that final dissolution, the cognizance of testamentary causes seems to have been first given to the ecclesiastical court. The rest remained as in his father's time: from whence we may easily perceive how far short this was of a thorough restitution of King Edward's or the Saxon laws.

The usurper Stephen, as the manner of usurpers is, promised much at his accession, especially with regard to redressing the grievances of the forest laws, but performed no great matter either in that or in any other point. It is from his reign, however, that we are to date the introduction of the Roman civil and canon laws into this realm; and at the same time was imported the doctrine of appeals to the court of Rome, as a branch of the canon law.

By the time of King Henry the second, if not earlier,

[the charter of Henry the first seems to have been forgotten; for we find the claim of marriage, ward, and relief, then flourishing in full vigour. The right of primogeniture seems also to have tacitly revived; being found more convenient for the public than the parcelling of estates into a multitude of minute subdivisions. However, in this prince's reign, much was done to methodize the laws, and reduce them into a regular order, as appears from that excellent treatise of Glanvil: which, though some of it be now antiquated and altered, yet, when compared with the code of Henry the first, it carries a manifest superiority(*m*), Throughout his reign, also, was continued the important struggle, which we have had occasion so often to mention, between the laws of England and Rome; the former supported by the strength of the temporal nobility, when endeavoured to be supplanted in favour of the latter by the popish clergy. Which dispute was kept on foot till the reign of Edward the first: when the laws of England, under the new discipline introduced by that skilful commander, obtained a complete and permanent victory. In the reign of Henry the second, now under consideration, there are four things which peculiarly merit the attention of a legal antiquary: 1. The constitution of the parliament at Clarendon, A.D. 1164, whereby the king checked the power of the pope and his clergy, and greatly narrowed the total exemption they claimed from their secular jurisdiction; though his further progress was unhappily stopped, by the fatal event of the disputes between him and archbishop Becket. 2. The institution of the office of justices of eyre, *in itinere;* the king having divided the kingdom into six circuits,—a division but little different from the present; and having commissioned these new created judges to administer justice and try writs of assize, in the several counties. These remedies are said to have been then first invented:

(*m*) Hale, Hist. C. L. 138.

[before which, all causes were usually terminated in the sheriff's county court, according to the Saxon custom; or before the king's justiciaries in the *aula regis*, in pursuance of the Norman regulations. The latter of which tribunals, travelling about with the king's person, occasioned intolerable expense and delay to the suitors; and the former, however proper for little debts and minute actions, where even injustice is better than procrastination, were now become liable to too much ignorance of the law, and too much partiality as to facts, to determine matters of considerable moment. 3. The introduction and establishment of the grand assize, or trial by special kind of jury, in a writ of right, at the option of the tenant or defendant, instead of the barbarous and Norman trial by battle. 4. To this time must also be referred the introduction of escuage, or pecuniary commutation for personal military service; which in process of time was the parent of the antient subsidies granted to the Crown by parliament, and the land-tax of later times.

Richard the first, a brave and magnanimous prince, was a sportsman as well as a soldier; and therefore enforced the forest laws with some rigour, which occasioned many discontents among his people; though (according to Matthew Paris) he repealed the penalties of castration, loss of eyes, and cutting off the hands and feet, before inflicted on such as transgressed in hunting; probably finding that their severity prevented prosecutions. He also, when abroad, composed a body of naval laws at the isle of Oleron, which are still extant, and of high authority; for in his time we began again to discover that (as an island) we were naturally a maritime power. But, with regard to civil proceedings, we find nothing very remarkable in this reign, except a few regulations regarding the Jews, and the justices in eyre; the king's thoughts being chiefly taken up by the knight errantry of a crusade against the Saracens in the holy land.

In King John's time, and that of his son, Henry the

[third, the rigours of the feudal tenures and the forest laws were so warmly kept up, that they occasioned many insurrections of the barons or principal feudatories; which, at last, had this effect, that, first, King John, and afterwards his son, consented to the two famous charters of English liberties, *Magna Charta* and *Charta de Forestâ*. Of these the latter was well calculated to redress many grievances and encroachments of the Crown in the exertion of forest laws; and the former confirmed many liberties of the church, and redressed many grievances incident to feudal tenures, of no small moment at the time; though now, unless considered attentively and with this retrospect, they seem but of trifling concern. But, besides these feudal provisions, care was also taken therein to protect the subject against other oppressions, then frequently arising from unreasonable amercements, from illegal distresses or other process for debts or services due to the Crown, and from the tyrannical abuse of the prerogative of purveyance and pre-emption. It fixed the law relative to the forfeiture of lands for felony, and prohibited for the future the grants of exclusive fisheries, and the erection of new bridges, so as to oppress the neighbourhood. With respect to private rights, it established the testamentary power of the subject over part of his personal estate, the rest being distributed among his wife and children; it regulated the law of dower; and prohibited the appeals of women, unless for the death of their husbands. In matters of public police and national concern, it enjoined an uniformity of weights and measures; gave new encouragements to commerce, by the protection of merchant strangers; and forbade the alienation of lands in mortmain. With regard to the administration of justice, besides prohibiting all denials or delays of it, it fixed the Court of Common Pleas at Westminster, that the suitors might no longer be harassed with following the king's person in all his progresses; and, at the same time, brought the trial of issues home to the very doors of the

[freeholders, by directing assizes to be taken in the proper counties, and establishing annual circuits: it also corrected some abuses then incident to the trials by wager of law and of battle; directed the regular awarding of inquests for life or member; prohibited the king's inferior ministers from holding pleas of the Crown, or trying any criminal charge, whereby many forfeitures might otherwise have unjustly accrued to the exchequer; and regulated the time and place of holding the inferior tribunals of justice, the sheriff's county court, the sheriff's tourn, and the court leet. It confirmed and established the liberties of the city of London, and all other cities, boroughs, towns, and ports of the kingdom. And, lastly, (which alone would have merited the title that it bears, of the *great* charter,) it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by the judgment of his peers, or the law of the land (*n*).

However, by means of these struggles the pope, in the reign of King John, gained a still greater ascendant here than he ever had before enjoyed, which continued through the long reign of his son, Henry the third, in the beginning of whose time the old Saxon trial by ordeal was also totally abolished. And we may, by this time, perceive in Bracton's treatise, a still further improvement in the method and regularity of the common law, especially in the point of pleadings (*o*). Nor must it be forgotten, that the first traces which remain of the separation of the greater barons from the less, in the constitution of parliaments, are found in the great charter of King John,

(*n*) The following is the celebrated 29th chapter of *Magna Charta*, the foundation of the liberty of Englishmen: "*Nullus liber homo capiatur, vel imprisonetur, aut dissesiatur de libero tenemento suo, vel libertatibus vel liberis consuetudinibus suis, aut utlagetur, aut exulet, aut aliquo modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terræ. Nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam.*"

(*o*) Hale, Hist. C. L. 156.

[though omitted in that of Henry the third; and that towards the end of the latter of these reigns we find the first record of any writ for summoning knights, citizens, and burgesses to parliament. And here we conclude the second period of our English legal history.

III. The third period commences with the reign of Edward the first, who hath justly been styled our English Justinian. For in his time the law did receive so sudden a perfection, that Sir Matthew Hale does not scruple to affirm, that more was done in the first thirteen years of his reign, to settle and establish the distributive justice of the kingdom, than in all the ages since that time put together (*p*).

It would be endless to enumerate all the particulars of these regulations; but the principal may be reduced under the following general heads. 1. He established, confirmed and settled the great charter and charter of forests. 2. He gave a mortal wound to the encroachments of the pope and his clergy, by limiting and establishing the bounds of ecclesiastical jurisdiction; and by obliging the ordinary, to whom all the goods of intestates at that time belonged, to discharge the debts of the deceased. 3. He defined the limits of the several temporal courts of the highest jurisdiction,—those of the king's bench, common pleas, and exchequer,—so as they might not interfere with each other's proper business, to do which they were afterwards obliged to have recourse to fictions. 4. He settled the boundaries of the inferior courts, confining them to causes of no great amount, according to their primitive institution; though of considerably greater than, by the alteration of the value of money, they were afterwards permitted to determine. 5. He secured the property of the subject, by abolishing all arbitrary taxes and talliages levied without consent of the national council. 6. He guarded the com-

(*p*) Hale, Hist. C. L. 158.

[mon justice of the kingdom from abuses, by giving up the royal prerogative of sending mandates to interfere in private causes. 7. He settled the form, solemnities, and effect of fines levied in the Court of Common Pleas, though the thing itself was of Saxon original. 8. He first established a repository for the public records of the kingdom, few of which are more antient than the reign of his father, and those were by him collected. 9. He improved upon the laws of King Alfred, by that great and orderly method of watch and ward for preserving the public peace and preventing robberies established by the statute of Winchester. 10. He settled and reformed many abuses incident to tenures, and removed some restraints on the alienation of landed property, by the statute of *quia emptores*. 11. He instituted a speedier way for the recovery of debts, by granting execution not only upon goods and chattels, but also upon lands, by writ of *elegit*; which was of signal benefit to a trading people; and, upon the same commercial ideas, he also allowed the charging of lands in a statute merchant, to pay debts contracted in trade,—contrary to all feudal principles. 12. He effectually provided for the recovery of advowsons, as temporal rights; in which, before, the law was extremely deficient. 13. He also effectually closed the great gulf in which all the landed property of the kingdom was in danger of being swallowed, by his reiterated statutes of mortmain; most admirably adapted to meet the frauds that had then been devised, though afterwards contrived to be evaded by the invention of uses. 14. He established a new limitation of property by the creation of estates tail: concerning the good policy of which, however, in the strict shape at least that originally belonged to them, modern times have entertained a very different opinion. 15. He reduced all Wales to the subjection not only of the Crown, but, in great measure, of the laws of England—an improvement which has been since thoroughly completed; and he seems to have entertained a design of doing the

like by Scotland, so as to have formed an entire and complete union of the island of Great Britain.

This catalogue might be continued much further: but, upon the whole, we may observe, that the very scheme and model of the administration of common justice between party and party was entirely settled by this king (*q*); and has continued nearly the same, in all succeeding ages, to this day; abating some few alterations, which the humour or necessity of subsequent times hath occasioned. The forms of writs, by which actions are commenced, were perfected in his reign, and established as models for posterity. The pleadings, consequent upon the writs, were then short, nervous, and perspicuous; not intricate, verbose and formal. The legal treatises, written in his time, as Britton, Fleta, Hengham (*r*) and the rest, are, for the most part, law at this day; or at least *were* so, till the alteration of tenures took place. And, to conclude, it is from this period, from the exact *observation* of *Magna Charta*, rather than from its *making* or *renewal* in the days of his grandfather and father, that the liberty of Englishmen began again to rear its head, though the weight of the military tenures hung heavy upon it for many ages after.

A better proof cannot be given of the excellence of his constitution, than that from his time to that of Henry the eighth there happened very few, and those not very considerable, alterations in the legal *forms* of proceedings. As to matter of *substance:* the old Gothic powers of electing the principal subordinate magistrates, the sheriffs, and conservators of the peace, were taken from the people in the reigns of Edward the second and Edward the third; and justices of the peace were established instead of the latter. In the reign also of Edward the third, the parliament is supposed most probably to have assumed its present form; by a separation of the Commons from the

(*q*) Hale, Hist. C. L. 162.

(*r*) As to these, see Hist. Eng. Law, by Reeves, vol. ii. p. 280, &c.

[Lords. The statute for defining and ascertaining treasons was one of the first productions of this new-modelled assembly; and the translation of the law proceedings, from French into Latin, another. Much also was done, under the auspices of this magnanimous prince, for establishing our domestic manufactures; by prohibiting the exportation of English wool, and the importation or wear of foreign cloth or furs; and by encouraging cloth-workers from other countries to settle here. Nor was the legislature inattentive to many other branches of commerce, or indeed to commerce in general; for, in particular, it enlarged the credit of the merchant, by introducing the statute staple; whereby he might the more readily pledge his lands for the security of his mercantile debts. And, as personal property now grew, by the extension of trade, to be much more considerable than formerly, care was taken, in case of intestacies, to appoint administrators particularly nominated by the law, to distribute that personal property among the creditors and kindred of the deceased, which before had been usually applied, by the officers of the ordinary, to uses then denominated pious. The statutes also of *præmunire*, for effectually depressing the civil power of the pope, were the work of this and the subsequent reign. And the establishment of a laborious parochial clergy, by the endowment of vicarages out of the overgrown possessions of the monasteries, added lustre to the close of the fourteenth century; though the seeds of the general reformation, which were thereby first sown in the kingdom, were almost overwhelmed by the spirit of persecution, introduced into the laws of the land by the influence of the regular clergy.

From this time to that of Henry the seventh, the civil wars and disputed titles to the crown gave no leisure for further juridical improvement: "*nam silent leges inter arma.*" And yet it is to these very disputes that we owe the happy loss of all the dominions of the Crown on the continent of France; which turned the minds of our sub-

[sequent princes entirely to domestic concerns. To these likewise we owe the method of barring entails by the fiction of *common recoveries*, invented originally by the clergy, to evade the statutes of mortmain, but introduced under Edward the fourth, for the purpose of unfettering estates, and making them more liable to forfeiture: while, on the other hand, the owners endeavoured to protect them by the universal establishment of *uses*, another of the clerical inventions.

In the reign of King Henry the seventh, his ministers, not to say the king himself, were more industrious in hunting out prosecutions upon old and forgotten penal laws, in order to extort money from the subject, than in framing any new beneficial regulations. For the distinguishing character of this reign was, that of amassing treasure in the king's coffers, by every means that could be devised: and almost every alteration in the laws, however salutary or otherwise in their future consequences, had this, and this only, for their great and immediate object. To this end the Court of Star Chamber was new modelled, and armed with powers, the most dangerous and unconstitutional, over the persons and properties of the subject. Informations were allowed to be received, in lieu of indictments at the assizes and sessions of the peace, in order to multiply fines and pecuniary penalties. The statute of fines for landed property was craftily and covertly contrived, to facilitate the destruction of entails, and make the owners of real estates more capable to forfeit as well as to alien. The benefit of clergy, which so often intervened to stop attainders and save the inheritance, was now allowed only once to lay offenders, who only could have inheritances to lose. A writ of *capias* was permitted in all actions on the case, and the defendant might in consequence be outlawed; because upon such outlawry his goods became the property of the Crown. In short, there is hardly a statute in this reign, introductive of a new law or modifying the old, but what

[either directly or obliquely tended to the emolument of the exchequer.

IV. This brings us to the fourth period of our legal history, viz. the reformation of religion, under Henry the eighth, and his children; which opens an entirely new scene in ecclesiastical matters; the usurped power of the pope being now for ever routed and destroyed, all his connexions with this island cut off, the Crown restored to its supremacy over spiritual men and causes, and the patronage of bishoprics being once more indisputably vested in the king. And, had the spiritual courts been at this time reunited to the civil, we should have seen the old Saxon constitution, with regard to ecclesiastical polity, completely restored.

With regard also to our *civil* policy, the statute of wills and the statute of uses, both passed in the reign of this prince, made a great alteration as to property: the former by allowing the *devise* of real estates by will, which before was in general forbidden: the latter, by endeavouring to destroy the intricate nicety of *uses*, though the narrowness and pedantry of the courts of common law prevented this statute from having its full beneficial effect. And thence the courts of equity assumed a jurisdiction, dictated by common justice and common sense; which, however arbitrarily exercised or productive of jealousies in its infancy, has at length been matured into a system of rational jurisprudence; the principles of which, notwithstanding they may differ in forms, are now equally adopted by the courts of both law and equity. From the statute of uses, and another statute of the same antiquity, which protected estates for years from being destroyed by the reversioner, a remarkable alteration took place in the mode of conveyancing: the antient assurance by feoffment and livery upon the land being thenceforth very seldom practised, since the more easy and more private invention of transferring property by secret conveyances to uses,—and long

[terms of years being now continually created in mortgages and family settlements, which might be moulded to a thousand useful purposes by the ingenuity of an able artist.

The further attacks in this reign upon the immunity of estates tail, which reduced them to little more than the conditional fees at the common law before the passing of the statute *De donis;* the establishment of recognizances in the nature of a statute staple, for facilitating the raising of money upon landed security, and the introduction of the bankrupt laws, as well for the punishment of the fraudulent, as the relief of the unfortunate, trader; all these were capital alterations of our legal policy, and highly convenient to that character, which the English began now to reassume, of a great commercial people. The incorporation of Wales with England, and the more uniform administration of justice, by destroying some counties palatine, and abridging the unreasonable privileges of such as remained, added dignity and strength to the monarchy; and, together with the numerous improvements before observed upon, and the redress of many grievances and oppressions which had been introduced by his father, will ever make the administration of Henry the eighth a very distinguished era in the annals of juridical history.

It must be however remarked, that, particularly in his later years, the royal prerogative was strained to a very tyrannical and oppressive height; and, what was the worst circumstance, its encroachments were established by law, under the sanction of those pusillanimous parliaments, one of which, to its eternal disgrace, passed a statute, whereby it was enacted that the king's proclamations should have the force of acts of parliament; and others concurred in the creation of that amazing heap of wild and newfangled treasons, which were slightly touched upon in a former place. Happily for the nation this arbitrary reign was succeeded by the minority of an

[amiable prince, during the short sunshine of which great part of these extravagant laws were repealed. And to do justice to the shorter reign of Queen Mary, many salutary and popular laws, in civil matters, were made under her administration, perhaps the better to reconcile the people to the bloody measures which she was induced to pursue for the re-establishment of religious slavery; the well-concerted schemes for effecting which were, through the providence of God, defeated by the seasonable accession of Queen Elizabeth.

The religious liberties of the nation being, by that happy event, established (we trust) on an eternal basis, though obliged in their infancy to be guided, against papists and other nonconformists, by laws of too sanguinary a nature; the forest laws having fallen into disuse; and the administration of civil rights in the courts of justice being carried on in a regular course, according to the institutions of King Edward the first, without any material innovations; all the principal grievances introduced by the Norman conquest seem to have been gradually shaken off, and our Saxon constitution restored, with considerable improvements; except only in the continuation of the military tenures, and a few other points, which still armed the Crown with a very oppressive and dangerous prerogative. It is also to be remarked, that the spirit of enriching the clergy and endowing religious houses had (through the former abuse of it) gone over to such a contrary extreme, and the princes of the house of Tudor and their favourites had fallen with such avidity upon the spoils of the church, that a decent and honourable maintenance was wanting to many of the bishops and clergy. This produced the *restraining* statutes, to prevent the alienation of lands and tithes belonging to the church and universities. The number of indigent persons being also greatly increased, by withdrawing the alms of the monasteries, a plan was formed in the reign of Queen Elizabeth, more humane and beneficial than even

[the feeding and clothing of millions; by affording them the means, with proper industry, to feed and to clothe themselves. And, the further any subsequent plans for maintaining the poor have departed from this institution, the more impracticable and even pernicious their visionary attempts have proved.

However, considering the reign of Queen Elizabeth in a great and political view, we have no reason to regret many subsequent alterations in the English constitution. For, though in general she was a wise and excellent princess, and loved her people: though in her time trade flourished, riches increased, the laws were duly administered, the nation was respected abroad, and the people happy at home; yet the increase of the power of the Star Chamber, and the erection of the High Commission Court in matters ecclesiastical, were the work of her reign. She also kept her parliaments at a very awful distance: and in many particulars she, at times, would carry the prerogative as high as her most arbitrary predecessors. It is true, she very seldom exerted this prerogative, so as to oppress individuals; but still she had it to exert: and therefore the felicity of her reign depended more on her want of opportunity and inclination, than want of power, to play the tyrant. This is a high encomium on her merit; but at the same time it is sufficient to show, that these were not those golden days of genuine liberty that we formerly were taught to believe; for surely the true liberty of the subject consists not so much in the gracious behaviour, as in the limited power, of the sovereign.

The great revolutions that had happened, in manners and in property, had paved the way, by imperceptible yet sure degrees, for as great a revolution in government: yet, while that revolution was effecting, the Crown became more arbitrary than ever, by the progress of those very means which afterwards reduced its power.

It is obvious to every observer, that till the close of the

[Lancastrian civil wars, the property and the power of the nation were chiefly divided between the king, the nobility, and the clergy. The commons were generally in a state of great ignorance; their personal wealth before the extension of trade, was comparatively small; and the nature of their landed property was such as kept them in continual dependence upon their feudal lord, being usually some powerful baron, some opulent abbey, or sometimes the king himself. Though a notion of general liberty had strongly pervaded and animated the whole constitution, yet the particular liberty, the natural equality, and personal independence of individuals were little regarded or thought of; nay, even to assert them was treated as the height of sedition and rebellion. Our ancestors heard, with detestation and horror, those sentiments rudely delivered, and pushed to most absurd extremes, by the violence of a Cade and a Tyler, which have since been applauded, with a zeal almost rising to idolatry, when softened and recommended by the eloquence, the moderation, and the arguments, of a Sidney, a Locke and a Milton. But when learning, by the invention of printing and the progress of religious reformation, began to be universally disseminated; when trade and navigation were suddenly carried to an amazing extent, by the use of the compass and the consequent discovery of the Indies: the minds of men, thus enlightened by science and enlarged by observation and travel, began to entertain a more just opinion of the dignity and rights of mankind. An inundation of wealth flowed in upon the merchants and middling rank; while the two great estates of the kingdom, which formerly had balanced the prerogative (the nobility and clergy), were greatly impoverished and weakened. The popish clergy, detected in their frauds and abuses, exposed to the resentment of the populace, and stripped of their lands and revenues, stood trembling for their very existence. The nobles, enervated by the refinements of luxury (which

[knowledge, foreign travel, and the progress of the politer arts, are too apt to introduce with themselves), and fired with disdain at being rivalled in magnificence by the opulent citizens, fell into enormous expenses; to gratify which they were permitted, by the policy of the times, to dissipate their overgrown estates and alienate their antient patrimonies. This gradually reduced their power and their influence within a very moderate bound: while the king, by the spoil of the monasteries and the great increase of the customs, grew rich, independent, and haughty: and the commons were not yet sensible of the strength they had acquired, nor urged to examine its extent by new burthens or oppressive taxations, during the sudden opulence of the exchequer. Intent upon acquiring new riches, and happy in being freed from the insolence and tyranny of the orders more immediately above them, they never dreamed of opposing the prerogative, to which they had been so little accustomed; much less of taking the lead in opposition, to which by their weight and their property they were now entitled. The latter years of Henry the eighth were, therefore, the times of the greatest despotism that have been known in this island since the death of William the Norman: the prerogative, as it then stood by common law, and much more when extended by Act of Parliament, being too large to be endured in a land of liberty.

Queen Elizabeth, and the intermediate princes of the Tudor line, had almost the same legal powers, and sometimes exerted them as roughly, as their father King Henry the eighth. But the critical situation of that princess with regard to her legitimacy, her religion, her enmity with Spain, and her jealousy of the Queen of Scots, occasioned greater caution in her conduct. She, probably, or her able advisers, had penetration enough to discern how the power of the kingdom had gradually shifted its channel, and wisdom enough not to provoke the commons to discover and feel their strength. She

[therefore drew a veil over the odious part of the prerogative; which was never wantonly thrown aside, but only to answer some important purpose: and, though the royal treasury no longer overflowed with the wealth of the clergy, which had been all granted out, and had contributed to enrich the people, she asked for supplies with such moderation, and managed them with so much economy, that the commons were happy in obliging her. Such, in short, were her circumstances, her necessities, her wisdom, and her good disposition, that never did a prince so long and so entirely for the space of half a century together, reign in the affections of the people.

On the accession of King James the first, no new degree of royal power was added to, or exercised by, him: but such a sceptre was too weighty to be wielded by such a hand. The unreasonable and imprudent exertion of what was then deemed to be prerogative, upon trivial and unworthy occasions, and the claim of a more absolute power inherent in the kingly office than had ever been carried into practice, soon awakened the sleeping lion. The people heard with astonishment doctrines preached from the throne and the pulpit subversive of liberty and property, and all the natural rights of humanity. They examined into the divinity of this claim, and found it weakly and fallaciously supported: and common reason assured them, that if it were of human origin, no constitution could establish it without power of revocation, no precedent could sanctify, no length of time could confirm it. The leaders felt the pulse of the nation, and found they had ability, as well as inclination, to resist it; and accordingly resisted and opposed it, whenever the pusillanimous temper of the reigning monarch had courage to put it to the trial; and they gained some little victories in the cases of concealments, monopolies, and the dispensing power. In the mean time very little was done for the improvement of private justice except the abolition of sanctuaries, and the extension of the bankrupt laws,

[the limitation of suits and actions, and the regulating of informations upon penal statutes. For we cannot class the laws against witchcraft and conjuration, under the head of improvements; nor did the dispute between Lord Ellesmere and Sir Edward Coke, concerning the powers of the Court of Chancery, tend much to the advancement of justice.

Again, when Charles the first succeeded to the crown of his father, and attempted to revive some enormities which had been dormant in the reign of King James, the loans and benevolences extorted from the subject, the arbitrary imprisonments for refusal, the exertion of martial law in time of peace, and other domestic grievances, clouded the morning of that misguided prince's reign; which, though the noon of it began a little to brighten, at last went down in blood, and left the whole kingdom in darkness. It must be acknowledged that, by the Petition of Right, enacted to abolish these encroachments, the English constitution received great alteration and improvement. But there still remained the latent power of the forest laws, which the Crown most unseasonably revived. The legal jurisdiction of the Star Chamber and High Commission Courts was also extremely great; though their usurped authority was still greater. And, if we add to these, the disuse of parliaments, the ill-timed zeal and despotic proceedings of the ecclesiastical governors, in matters of mere indifference, together with the arbitrary levies of tonnage and poundage, ship-money, and other projects, we may see grounds most amply sufficient for seeking redress in a legal constitutional way. This redress, when sought was also constitutionally given; for all these oppressions were actually abolished by the king in parliament, before the rebellion broke out, by the several statutes for triennial parliaments, for abolishing the Star Chamber and High Commission Courts, for ascertaining the extent of forests and forest laws, for renouncing

[ship-money and other exactions, and for giving up the prerogative of knighting the king's tenants *in capite* in consequence of their feudal tenures: though it must be acknowledged that these concessions were not made with so good a grace as to conciliate the confidence of the people. Unfortunately, either by his own mismanagement, or by the arts of his enemies, the king had lost the reputation of sincerity; which is the greatest unhappiness that can befall a prince. Though he formerly had strained his prerogative not only beyond what the genius of the present times would bear, but also beyond the examples of former ages, he had now consented to reduce it to a lower ebb than was consistent with monarchical government. A conduct so opposite to his temper and principles, joined with some rash actions and unguarded expressions, made the people suspect that his condescension was merely temporary. Flushed, therefore, with the success they had gained, fired with resentment for past oppressions, and dreading the consequences if the king should regain his power, the popular leaders, who in all ages have called themselves the *people*, began to grow insolent and ungovernable; their insolence soon rendered them desperate; and despair at length forced them to join with a set of military hypocrites and enthusiasts, who overturned the Church and monarchy, and proceeded, with deliberate solemnity, to the trial and murder of their sovereign.

We pass by the crude and abortive schemes for amending the laws, in the times of confusion which followed: the most promising and sensible whereof, such as the establishment of new trials, the abolition of feudal tenures, the Act of navigation, and some others, were adopted in the—

V. Fifth period, which is to be next mentioned, viz. after the restoration of King Charles the Second. Immediately upon which, the principal remaining grievances,

[the doctrine and consequences of military tenures, was taken away and abolished, except in the instance of corruption of inheritable blood, upon attainder of treason and felony. And though the monarch in whose person the royal government was restored, and with it our antient constitution, deserves no commendation from posterity, yet in his reign, wicked, sanguinary, and turbulent as it was, the concurrence of happy circumstances was such, that from thence we may date not only the re-establishment of our Church and monarchy, but also the complete restitution of English liberty, for the first time since its total abolition at the Conquest. For therein not only these slavish tenures, the badge of foreign dominion, with all their oppressive appendages, were removed from incumbering the estates of the subject: but also an additional security of his person from imprisonment was obtained, by that great bulwark of our constitution, the *Habeas Corpus* Act. These two statutes, with regard to our property and persons, form a second *Magna Charta*, as beneficial and effectual as that of Running-Mead. That only pruned the luxuriances of the feudal system: but the statute of Charles the second extirpated all its slaveries,—except perhaps in copyhold tenure; and there also they are now in great measure enervated by gradual custom, and the interposition of our courts of justice, and under modern enactments seem to be approaching a final extinction. *Magna Charta* only, in general terms, declared, that no man shall be imprisoned contrary to law: the *Habeas Corpus* Act points him out effectual means, as well to release himself, (though committed even by the king in council,) as to punish all those who shall thus unconstitutionally misuse him.

To this may be added the abolition of the prerogatives of purveyance and pre-emption; the statute for holding triennial parliaments; the abolition of the writ *de hæretico comburendo;* the statute of frauds and perjuries,

[a great and necessary security to private property; the statute for distribution of intestates' estates; and that of amendments and *jeofails*, which cut off many of those superfluous niceties which so long had disgraced our courts; together with many wholesome Acts that were passed in this reign, for the benefit of navigation and the improvement of foreign commerce: and the whole, when we likewise consider the freedom from taxes and armies which the subject then enjoyed, will be sufficient to demonstrate this truth, "that the constitution of England "had arrived to its full vigour, and the true balance "between liberty and prerogative was happily established "by *law*, in the reign of Charles the second" (*r*).

It is by no means intended to palliate or defend many very iniquitous proceedings, *contrary to all law*, in that reign, through the artifice of wicked politicians, both in and out of employment. What seems incontestable is this, that *by the law*, as it then stood, notwithstanding some invidious, nay dangerous, branches of the prerogative have since been lopped off, and the rest more clearly defined, the people had a larger portion of real liberty than they had enjoyed in this country since the Norman conquest; and sufficient power residing in their own hands, to assert and preserve that liberty, if invaded by the royal prerogative: for which we need but appeal to the memorable catastrophe of the next reign. For when King Charles's deluded brother attempted to enslave the nation, he found it was beyond his power: the people both could and did resist him; and, in conse-

(*r*) Blackstone (vol. iv. p. 438), adds to the measures of the time of Car. II. of which he approves, the "Test and Corporation Acts," "which secure both our civil and religious liberties," and he subjoins the following note, "The point of "time at which I would choose to "fix this *theoretical* perfection of "our public law, is the year 1679, "after the Habeas Corpus Act was "passed, and that for licensing the "press had expired; though the "years which immediately followed "it, were times of great *practical* "oppression."

[quence of such resistance, obliged him to quit his enterprise and his throne together.] And this introduces us to the last period of our legal history, viz.—

VI. From the revolution in 1688, to the present time. And in the first place we will refer to the many important measures which became law about the period of that event; as [the Bill of Rights, the Toleration Act, the Act of Settlement with its conditions, the Act for uniting England with Scotland, and some others. These statutes asserted our liberties in more clear and emphatical terms; regulated the succession of the Crown by Parliament, as the exigencies of religious and civil freedom required; confirmed and exemplified the doctrine of resistance, when the executive magistrate endeavours to subvert the constitution; maintained the superiority of the laws above the king, by pronouncing his dispensing power to be illegal; indulged tender consciences in several points relating to religion; established triennial, (since turned into septennial,) elections of members to serve in parliament; excluded certain officers from the house of commons; restrained the king's pardon from obstructing parliamentary impeachments; imparted to all the lords an equal right of trying their fellow peers; regulated trials for high treason; set bounds to the civil list; placed the administration of that revenue in hands that are accountable to parliament; and made the judges completely independent of the sovereign, his ministers, and his successors. Yet, though these provisions, in appearance and nominally, reduced the strength of the executive power to a much lower ebb than in the preceding period, if, on the other hand, we throw into the opposite scale, (what perhaps the immoderate reduction of the antient prerogative may have rendered in some degree necessary,) the vast acquisition of force arising from the Riot Act, the annual expedient of a standing army, the

[vast acquisition of personal attachment arising from the magnitude of the national debt, and the manner of levying those yearly millions that are appropriated to pay the interest,—it will be found that the Crown, gradually and imperceptibly, gained almost as much in influence, as it apparently lost in prerogative.

Such being the provisions passed for the assertion of our liberties, the chief alterations of moment in other directions during the earlier part of the period following the Revolution, were the solemn recognition of the law of nations with respect to the rights of ambassadors; the cutting off, by a statute for the amendment of the law, a vast number of excrescences, that in process of time had sprung out of the practical part of it; the protection of corporate rights by the improvements in writs of *mandamus* and informations in nature of *quo warranto;* the regulation of trials by jury, and the admitting witnesses for prisoners, upon oath; further restraints upon alienation of lands in mortmain; the annihilation of the terrible judgment of *peine forte et dure;* the extension of the benefit of clergy, by abolishing the pedantic criterion of reading; the counterbalance to this mercy, by the vast increase of capital punishment; new and effectual methods for the speedy recovery of rents: the improvements which were made in ejectments for the trying of titles; the introduction and establishment of paper credit, by indorsements upon bills and notes, which have shown the legal possibility and convenience, which our ancestors so long doubted, of assigning a *chose in action;* the translation of all legal proceedings into the English language; the establishment of the great system of marine jurisprudence, of which the foundations were laid by clearly developing the principles on which policies of insurance are founded, and by happily applying those principles to particular cases; and, lastly, the enlargement of view which introduced into our courts of common law, in some instances where

[narrower doctrines once prevailed, (particularly in the law of mortgage and of landlord and tenant,) the same principles of redress as were already established in our courts of equity.]

To come nearer our own time,—the most conspicuous event in our legislative annals has been the Act for the union of Great Britain and Ireland, at the commencement of the present century; a measure recommended by the wisest and most unquestionable policy, to two nations so nearly connected by their geographical position and their common subjection to the same Crown, and so long already united in language, in civil institutions, and in arms. We may also single out for particular enumeration, the Reform Act of 1832, the statute by which municipal corporations were regulated, and the Act further to amend the representation of the people, which was passed in the year 1867: all statutes of transcendent importance, as having been designed to abate the indirect influence immemorially exercised by wealth and power, in our general and local institutions—while to these we may add the renewed efforts made in recent statutes to secure the purity of our parliamentary and municipal elections.

Of other measures of importance passed in the present century, those relating to the Church may next attract our attention; and here we may notice those by which protestant dissenters of all denominations, and such persons as profess the Jewish religion, or the faith of the Church of Rome, have been in general relieved from all restraints which before excluded them from free participation with their fellow subjects in political rights, as well as from all forfeitures and penalties in respect of their religious tenets: the Acts for commutation of tithes; for reform of the law relative to pluralities and residence; for the better application of cathedral revenues; and those measures which have been devised for the extension of the places of

[illegible]

[illegible]

[illegible]

Under the reforms in the administration of civil justice may be particularized the better regulation of juries; the abolition of the antiquated forms of real actions, which had survived the lapse of ages only to subserve the purposes of chicanery; fresh improvements in the proceedings by way of ejectment, prohibition, and mandamus; the many important and elaborate improvements which have been introduced in the forms of process and pleading; the reformation of the law of evidence; the establishment of county courts throughout the kingdom, for the decision of civil cases up to a certain amount, so as to dispense justice cheaply and speedily at the doors of the people (a return, it will be noticed, to the policy of our Saxon ancestors); the creation of the court of probate, and of the court for divorce and matrimonial causes; and the renewed efforts which have been lately made to improve the administration of the law of bankruptcy.

With respect to the improvements of criminal justice, we may notice the consolidation of the law relating to most of the principal offences; the abolition of the benefit of clergy, and of appeals; the better regulation of the law of principal and accessory, of commitment and bail, and of venue; the introduction of a variety of provisions tending to simplify the course of proceeding, and to deliver it from technical difficulties; the allowance of counsel, in all cases, to address the jury for the prisoner; the remarkable mitigation which has generally taken place in the antient severity of our criminal punishments; the establishment of a tribunal for the decision of such points of criminal law as shall arise in the course of the trial and be reserved by the judge; and the recent withdrawal, from the eye of the general public, of the execution of criminals who have been sentenced to death for murder.

Finally, we may here refer with feelings of hope (though mixed with some anxiety) to the attempt just made to remove such obstacles as still remain to the speedy and

effectual administration of justice, by the establishment of a Supreme Court of Judicature, uniting and consolidating in itself the former superior courts; and intended to form one grand tribunal both of original and appellate jurisdiction, in one or other department whereof redress may be obtained for all injuries, whether civil or criminal, in accordance with the rules of law as modified by the principles of equity.

[Thus therefore, for the amusement and instruction of the reader, have been delineated some rude outlines of a plan for the history of our laws and liberties, from their first rise and gradual progress among our British and Saxon ancestors, till their total eclipse at the Norman conquest, from which they have gradually emerged and risen to the perfection they now enjoy, at different periods of time. It has been shown that the rules of law which regard the *rights* of each member of the community, whether considered in an *individual*, a *relative*, or a *social* capacity, the *private injuries* which may be committed in violation of these rights, and the wrongs which affect the public, or *crimes*, have been and are every day improving, and are now fraught with the accumulated wisdom of ages; that the forms of administering justice have also, (particularly in our own times,) received the assiduous care of the cultivators of legal science; and that our religious, civil, and political liberties, so long depressed in popish and arbitrary times, and occasionally threatened with absolute extinction, have since, in a constant course of progressive development, commencing at the happy era of the Revolution, been effectually vindicated and established. Of a constitution so wisely contrived, so strongly raised, and so highly finished, it is hard to speak with that praise which is justly and severely its due; the thorough and attentive contemplation of it, will furnish its best panegyric.]

The admiration that it is calculated to inspire should lead to some reflection on the duties which attach to citizens born to so noble an inheritance. It was the stern task of our forefathers to struggle against the tyrannical pretensions of regal power: to us, the course of events appears to have assigned the opposite care, of holding in check the aggressions of popular licence, and maintaining inviolate the just claims of the prerogative.

But, in a general view, we have only to pursue the same path that has been trodden before us,—to carry on the great work of securing to each individual of the community, as large a portion of his natural freedom as is consistent with the organization of society, and to increase, to the highest degree that the order of divine Providence permits, the benefits of his civil condition. A clearer perception of the true nature of this enterprise, of the vast results to which it tends, and of the obligations by which we are bound to its advancement, has been bestowed on the present generation, than on any of its predecessors. May it not fail also to recollect, amidst the zeal inspired by such considerations, that the desire for social improvement degenerates, if not duly regulated, into a mere thirst for change;—that the fluctuation of the law, is itself a considerable evil;—and that, however important may be the redress of its defects, we have a still dearer interest in the conservation of its existing excellencies.

END OF THE WORK.

TABLE OF STATUTES.

9 Hen. 3,
c. 5 ..... ii. 531
c. 9 ..... i. 54
c. 18 ..... ii. 179
c. 22 ..... iv. 458
c. 25 ..... ii. 518
c. 29 ..... iv. 417
c. 32 ..... i. 469
c. 37 ..... ii. 556
20 Hen. 3,
c. 1 ..... iii. 608
c. 8 ..... iii. 467
c. 9 ..... i. 13; ii. 285
c. 10 ..... iii. 271
52 Hen. 3,
c. 4 ..... iii. 253
c. 10 ..... iv. 323
c. 21 ..... iii. 422
3 Edw. 1,
c. 4 ..... ii. 541, 542
c. 10 ..... ii. 635
c. 13 ..... iii. 437; iv. 87
c. 15 ..... iv. 357
c. 17 ..... iii. 386
c. 21 ..... ii. 521
c. 28 ..... iii. 276
c. 29 ..... i. 17
c. 34 ..... ii. 611; iii. 378
c. 36 ..... i. 197
c. 39 ..... iii. 467
c. 51 ..... iii. 351, 484
4 Edw. 1,
Offic. Coronatoris.... ii. 637
Stat. de Bigamis .... iv. 277
6 Edw. 1,
c. 1 .. iii. 575, 608, 617, 639
c. 5 ..... iii. 408
c. 9 ..... iv. 475
7 Edw. 1,
Stat. de Viris Relig... i. 456
13 Edw. 1, Stat. Westm. Sec.
c. 1 i. 240, 242, 558; iv. 351
c. 2 ..... iii. 422, 616
c. 3 ..... iv. 351
c. 4 .. iii. 310, 311; iv. 351
13 Edw. 1, Stat. Westm. Sec.
c. 5 .... iii. 415, 611, 612
c. 6 ..... ii. 585
c. 10 ..... iii. 271
c. 18 ..... i. 308; iii. 586
c. 19 ..... ii. 183
c. 24 ..... iii. 324, 364
c. 30 ..... iii. 350, 552
c. 31 ..... iii. 546
cc. 32, 33 ..... i. 457
c. 34 ..... i. 268
c. 38 ..... iii. 524
c. 39 ..... iv. 342
c. 45 ..... iii. 591
c. 46 ..... i. 654
Stat. Wynton. ..... ii. 652
Stat. Merc..... i. 309, 311
Stat. Circ. Agatis .. iv. 495
18 Edw. 1, Stat. dñi R. de Tris, etc.
cc. 1, 2 .. i. 199, 234, 469, 487, 560, 561; ii. 646
c. 3 ..... i. 458
Stat. de Quo War. .. i. 228; iii. 639
21 Edw. 1, st. 1..... iii. 524
25 Edw. 1,
cc. 5, 6 ..... i. 165; ii. 556
Confirmatio Cartarum i. 166; ii. 469, 560
27 Edw. 1,
c. 4 ..... iii. 350
st. 2 ..... i. 458
28 Edw. 1, Artic. sup. Cart.,
c. 1 ..... i. 209
c. 5 ..... iii. 332
c. 8 ..... ii. 624
c. 13 ..... ii. 625
c. 19 ..... iii. 662
33 Edw. 1,
Stat. 4, Ordin. de Consp. iv. 422
34 Edw. 1,
Stat. de Conj. Feoffatio. i. 166, 458; ii. 644, 646

34 Edw. 1,
Ordin. Forestæ, st. 4, c. 1, i. 165; ii. 556
9 Edw. 2, c. 2, Artic. Cleri iii. 312
9 Edw. 2, st. 2,
Stat. Lincoln. de Vic. ii. 625, 627
12 Edw. 2, c. 3..... iii. 350
15 Edw. 2..... iii. 271
17 Edw. 2, st. 1,
Pro. Hib. ..... i. 313
c. 3 ..... i. 199
c. 4 ..... i. 235
c. 9 ..... ii. 509
c. 10 ..... ii. 510, 540
c. 16 ..... i. 56
Prerogativa Regis ..iv. 458
1 Edw. 3, st. 2,
c. 2 ..... ii. 531
cc. 5, 7 ..... ii. 585
c. 8 ..... ii. 472
c. 9 ..... i. 54
c. 12 ..... i. 186, 199, 470
c. 16 ..... ii. 644; iv. 291
2 Edw. 3,
c. 2 .....iv. 475
c. 3 ..... i. 150
c. 4 ..... ii. 627
4 Edw. 3,
c. 2 ..... ii. 644; iii. 351
c. 7 ..... ii. 199; iii. 370
c. 9 ..... ii. 627
c. 14 ..... ii. 325
5 Edw. 3,
c. 4 ..... ii. 627
c. 9 .....i. 144, 145, 164; iv. 380
10 Edw. 3, st. 1 .....iv. 476
14 Edw. 3,
c. 1 ..... i. 54
c. 4 ..... iv. 67
c. 5 .....ii. 457
c. 7 .....ii. 625
c. 15 .....iv. 475
c. 16 ..... iii. 273, 350
14 Edw. 3, st. 2 .... i. 166; ii. 556
st. 4 ..... ii. 530, 531
18 Edw. 3, st. 2, c. 2 ..... ii. 644
18 Edw. 3, st. 3,
c. 2 .....iv. 278
c. 3 ..... i. 459
20 Edw. 3,
c. 2 ..... i. 71
c. 4 .....ii. 472
25 Edw. 3, st. 1 .. ii. 449, 450, 506
st. 2 ..... ii. 407, 426
st. 3, c. 4 .....iv. 441
c. 7 ..... iii. 610
25 Edw. 3, st. 5,
c. 2 iv. 7, 77, 151, 157, 219
c. 3 .....iv. 418
c. 4 .. i. 145, 164; iv. 380
c. 8 .....ii. 585
c. 11 ..... i. 197
c. 13 .....ii. 523
25 Edw. 3, st. 6,
c. 1 .....iv. 178
c. 4 .....ii. 197
c. 6 .....ii. 666
27 Edw. 3, st. 1,
c. 3 .....iv. 178
c. 9 ..... i. 307
c. 13 .....ii. 543
27 Edw. 3, st. 2,
c. 8 .....i. 55; iv. 421
c. 19 .....i. 55
c. 20 .....i. 55
28 Edw. 3,
c. 3 .. i. 145, 164; iv. 381
c. 13 .....iv. 421
31 Edw. 3,
c. 11 .....ii. 184
c. 12 ..... iii. 333
34 Edw. 3,
c. 1 .... iv. 296, 391, 395
c. 15 ..... i. 235
c. 16 ..... i. 565
36 Edw. 3, st. 1,
c. 10 .....ii. 325
c. 12 .....ii. 644
c. 13 ..... iii. 657
37 Edw. 3,
c. 18 ..... iv. 16
c. 39 ..... ii. 7
38 Edw. 3, st. 1, c. 9.....iv. 16
38 Edw. 3, st. 2,
cc. 1, 2, 3, 4 .....iv. 178
42 Edw. 3, c. 9 ..... ii. 632
50 Edw. 3 ..... i. 366
1 Rich. 2,
c. 9 ..... i. 366
c. 11 .....ii. 627
2 Rich. 2, st. 1,
c. 2 .....ii. 625
c. 4 .....ii. 594
c. 5 .....ii. 611
st. 2, c. 5 ..... iii. 378
3 Rich. 2, c. 3..... iv. 178
5 Rich. 2, st. 1, c. 8 .....iii. 244
5 Rich. 2, st. 2,
c. 4 .....ii. 612
c. 5 .....iv. 205
7 Rich. 2, c. 12 ..... iv. 178
8 Rich. 2, c. 2 ..... iii. 351
11 Rich. 2, c. 10 .....ii. 472
12 Rich. 2,
c. 2 .....ii. 625

12 Rich. 2,
c. 10 ..... ii. 646
c. 11 ..... ii. 611; iii. 378
13 Rich. 2, st. 1,
c. 5 ..... iii. 342
c. 7 ..... ii. 646
c. 15 ..... iv. 178
13 Rich. 2, st. 2,
c. 1 ..... iv. 474
c. 2 ..... iv. 178
14 Rich. 2, c. 11 ..... ii. 612, 646
15 Rich. 2,
c. 2 ..... iii. 244
c. 3 ..... iii. 342; iv. 311
c. 5 ..i. 458; ii. 704; iv. 179
c. 6 ..... ii. 680
16 Rich. 2 ..... iv. 180
c. 5 ..... ii. 457
17 Rich. 2, c. 6 ..... iii. 325, 577
21 Rich. 2, c. 3 ..... iv. 161
1 Hen. 4,
c. 6 ..... i. 622
c. 14 ..... iv. 380
2 Hen. 4,
c. 1 ..... i. 54
c. 3 ..... iv. 179
c. 10 ..... iv. 161
c. 15 ..... iv. 203, 205
4 Hen. 4,
c. 7 ..... i. 366
c. 12 ..... ii. 681, 682
c. 18 ..... iii. 271
c. 23 ..... iii. 326
5 Hen. 4 ..... ii. 456
c. 5 ..... iv. 80
c. 6 ..... ii. 343
c. 10 ..... iii. 122
7 Hen. 4,
c. 2 ..... ii. 428
c. 13 ..... i. 278
11 Hen. 4 ..... ii. 313
1 Hen. 5,
c. 1 ..... ii. 369
c. 4 ..... ii. 632
c. 5 ..... ii. 617; iv. 369
2 Hen. 5, st. 1 ..... ii. 384
c. 1 ..... iii. 27
c. 4 ..... ii. 646
c. 6 ..... ii. 491; iv. 218
c. 7 ..... ii. 705; iv. 206
2 Hen. 5, st. 2,
c. 3 ..... iii. 524
c. 4 ..... ii. 646
c. 8 ..... ii. 629
4 Hen. 5, st. 2 ..... ii. 493, 500
2 Hen. 6 ..... ii. 449
6 Hen. 6 ..... ii. 449, 453, 533
8 Hen. 6 ..... ii. 449
c. 1 ..... ii. 525
8 Hen. 6,
c. 6 ..... iv. 101
c. 7 ..... ii. 351, 352
c. 9 ..... iii. 244
c. 29 ..... iv. 421
10 Hen. 6, c. 2 ..... ii. 351
11 Hen. 6, cc. 2, 5, ... i. 366
14 Hen. 6,
c. 1 ..... iv. 385
c. 8 ..... iv. 218
15 Hen. 6,
c. 3 ..... ii. 495
c. 4 ..... iii. 577
18 Hen. 6,
c. 6 ..... iii. 661
c. 8 ..... ii. 495
c. 11 ..... ii. 646
c. 19 ..... ii. 591
20 Hen. 6 ..... ii. 495
c. 9 ..... ii. 609
c. 11 ..... ii. 491; iv. 218
23 Hen. 6,
c. 7 ..... ii. 632
c. 9 ..... ii. 625
c. 15 ..... ii. 369
27 Hen. 6, c. 5 ..... ii. 73; iv. 213
29 Hen. 6, c. 2 ..... iv. 218
31 Hen. 6, c. 4 ..... iv. 218, 219
33 Hen. 6, c. 1 ..... iv. 130
36 Hen. 6, c. 20 .... i. 56, 211, 212
1 Edw. 4 ..... i. 56
c. 1 ..... ii. 429
c. 2 ..... iv. 323
c. 12 ..... i. 269
3 Edw. 4, c. 12 ..... ii. 467
8 Edw. 4 ..... i. 211
12 Edw. 4 ..... i. 248
14 Edw. 4, c. 4 ..... iv. 219
22 Edw. 4, c. 8 ..... i. 90
1 Rich. 3,
cc. 1, 5 ..... i. 366
c. 7 ..... i. 565
1 Hen. 7, c. 1 ..... i. 366
3 Hen. 7,
c. 1 .... iv. 292, 309, 376
c. 2 ..... iv. 84
c. 4 ..... ii. 47
c. 14 ..... ii. 459
4 Hen. 7 ..... i. 566
c. 17 ..... iv. 441
c. 19 ..... i. 366
c. 24 ..... i. 249, 565, 566
7 Hen. 7, c. 2 ..... i. 470
11 Hen. 7,
c. 1 ..... i. 30; iv. 152
c. 3 ..... iv. 376
c. 12 ..... iii. 576
c. 20 ..... i. 249, 490, 572, 583

19 Hen. 7,
c. 12 ..... iii. 44
c. 15 ..... i. 366
1 Hen. 8, c. 6 .....iv. 377
3 Hen. 8,
c. 3 ..... iii. 204
c. 4 ..... i. 470
c. 11 ..... iii. 204, 205
6 Hen. 8, c. 6 .....iv. 385
7 Hen. 8, c. 4 .....i. 249; iii. 617
14 & 15 Hen. 8, c. 5 .. iii. 10, 205, 213
21 Hen. 8,
c. 5 .....ii. 184, 201
c. 6 ..... ii. 743
c. 7 .....iv. 130
c. 11 .....iv. 437
c. 13 .....ii. 691
c. 19 .....iii. 617
c. 20 ..... ii. 625; iv. 309
22 Hen. 8,
c. 5 ..... i. 129; iii. 129
c. 9 ..... iv. 68
c. 10 .....iv. 289
23 Hen. 8,
c. 1 ..... iv. 75, 101, 127
c. 2 ..... iii. 122
c. 5 .....iii. 178, 296, 297
c. 6 ..... i. 311
c. 10 ....i. 459, 461; iii. 70
c. 15 .....iii. 575, 576
c. 37 .....iii. 431
24 Hen. 8,
c. 5 ..... iv. 50, 51, 54
c. 8 .....iii. 670
c. 12 .....ii. 476; iii. 305; iv. 182
25 Hen. 8,
c. 6 ..... iv. 93
c. 14 .....iv. 206
c. 19 ..i. 66; ii. 527; iii. 307, 308; iv. 182
c. 20 .. ii. 527, 663; iv. 182
c. 21 .... ii. 247, 670, 671; iv. 182
c. 22 .....ii. 242, 430
c. 24 ..... ii. 476
26 Hen. 8,
c. 1 .....ii. 524, 525, 704; iii. 307
c. 3 ..... ii. 533
c. 13 .. i. 249; iv. 364, 398
c. 14 ..... ii. 669
27 Hen. 8,
c. 8 ..... ii. 533
c. 10 ..i. 272, 273, 340, 366, 367, 592, 611
c. 11 ..... i. 619
c. 15 .....i. 66
27 Hen. 8,
c. 16 ..... i. 535
c. 19 .....iv. 398
c. 24 .....iv. 469
c. 25 ..... iii. 42
c. 26 ..... i. 84, 85
c. 27 ..... ii. 603
c. 28 ..... ii. 679
28 Hen. 8,
c. 7 .....ii. 242, 431
c. 11 .....i. 259; ii. 695
c. 15 .....iv. 311, 312
c. 16 ..... ii. 670
c. 17 ..... ii. 477
c. 18 ..... ii. 453
31 Hen. 8,
c. 1 ..... i. 344, 355, 517
c. 3 ..... i. 214
c. 8 ..... ii. 508
c. 10 ..ii. 345, 452, 454, 614
c. 13 ..... ii. 679
c. 14 .....iv. 206
32 Hen. 8,
c. 1 ..... i. 470, 566
c. 2 ....i. 687; iii. 468, 469
c. 7 .....iii. 310, 397
c. 21 .....iii. 484
c. 22 ..... i. 517
c. 28 ..... i. 71, 249
c. 29 ..... i. 213
c. 32 ..... i. 344, 355
c. 33 .....iii. 391
c. 34 ..... i. 301, 525
c. 36 ..... i. 249, 566
c. 38 .....ii. 240, 242
c. 40 ..... iii. 205
c. 42 ..... iii. 205
c. 46 ..... i. 192; iii. 660
33 Hen. 8,
c. 1 .....iv. 273
c. 8 .....iv. 211
c. 12 .. ii. 640; iv. 187, 325
c. 21 .....ii. 389, 448
c. 22 ..... i. 192
c. 24 ..... iii. 351
c. 27 ..... iii. 15
c. 31 ..... i. 116
c. 39 .. i. 250; iii. 662–665, 667
34 & 35 Hen. 8,
c. 1 ..... i. 595
c. 4 .....ii. 145
c. 5 ..... i. 593
c. 8 ..... iii. 205
c. 20 ..... i. 249, 573, 583
35 Hen. 8,
c. 1 ..... ii. 431
c. 2 .....iv. 364
c. 3 .....i. 92

35 Hen. 8,
c. 16 ..... i. 66
37 Hen. 8,
c. 4 ..... iii. 70
c. 6 ..... iv. 80
c. 9 ..... ii. 91; iii. 450
cc. 11, 12 ..... ii. 732
39 Hen. 8, c. 12 ..... iv. 398
1 Edw. 6,
c. 1 ..... iv. 208
c. 3 ..... ii. 223; iii. 44
c. 4 ..... i. 186
c. 7 ..... ii. 646
c. 11 ..... ii. 476
c. 12 .. ii. 448, 453, 508, 610; iv. 69, 75, 101, 110, 162, 278, 426, 441
c. 14 ..... iii. 70
2 Edw. 6, c. 25 ..... iii. 283
2 & 3 Edw. 6,
c. 1 ..... ii. 703
c. 2 ..... ii. 591
c. 8 ..... iii. 657
c. 13 ..... ii. 723; iii. 311
c. 16 ..... ii. 741
c. 21 ..... ii. 662
c. 23 ..... ii. 240
c. 24 ..... iv. 363
3 & 4 Edw. 6,
c. 8 ..... iii. 178
c. 11 ..... i. 66
c. 16 ..... iii. 44
5 & 6 Edw. 6,
c. 1 ..... ii. 703, 705
c. 11 .. i. 269; iv. 364, 384
c. 12 ..... i. 79
c. 16 ..... ii. 621; iv. 188
c. 25 ..... iii. 195
1 Mar. sess. 1 ..... iv. 101, 162
1 Mar. sess. 2,
c. 1 ..... ii. 431
c. 2 ..... i. 79
c. 5 ..... iii. 469
c. 8 ..... ii. 630, 648
c. 9 ..... iii. 205
1 Mar. sess. 3,
c. 1 ..... ii. 441
c. 2 ..... ii. 632
1 & 2 Phil. & Mar.
c. 4 ..... iv. 4, 288
c. 8 .. i. 460; ii. 242, 525, 666; iv. 183
c. 10 ..... iv. 165
c. 12 ..... iii. 255, 422
c. 13 ..... ii. 640
2 & 3 Phil. & Mar.
c. 4 ..... i. 93
c. 7 ..... ii. 75
c. 16 ..... ii. 594; iii. 187
4 & 5 Phil. & Mar.
c. 2 ..... ii. 585
c. 3 ..... ii. 583
c. 4 ..... iv. 75, 101
c. 8 ..... ii. 311; iv. 84
1 Eliz.
c. 1 .... i. 66; ii. 525, 666, 693, 703; iii. 307, 309; iv. 208
c. 2 .. ii. 329, 693, 694, 699, 703, 706; iv. 209
c. 3 ..... ii. 326, 432
c. 4 ..... ii. 533
c. 11 ..... ii. 500
c. 19 ..... ii. 561
5 Eliz.
c. 1 ..... ii. 704
c. 4 ..... ii. 228—230
c. 5 ..... ii. 595
c. 11 ..... iv. 454
c. 17 ..... iv. 93
c. 18 ..... iii. 321; iv. 159
c. 20 ..... iv. 4, 288
c. 21 ..... iv. 185
8 Eliz.
c. 2 ..... iii. 575
c. 4 ..... iv. 125, 127
c. 13 ..... iii. 159
13 Eliz.
c. 1 ..... iv. 162
c. 2 ..... iv. 182
c. 4 ..... iii. 663, 665
c. 5 .. ii. 47, 50, 153; iv. 461
c. 7 ..... ii. 146
c. 8 ..... ii. 91
c. 9 ..... iii. 178, 296
c. 10 .... i. 70, 71, 75, 77; ii. 713, 735; iii. 313
c. 12 ..... ii. 660, 663
c. 20 ..... ii. 736
c. 29 ..... iii. 301; iv. 326
14 Eliz.
c. 5 ..... iii. 44
c. 8 ..... i. 249, 583
c. 11 ..... ii. 713, 735
c. 14 ..... iii. 27; ii. 735
18 Eliz.
c. 1 ..... iv. 454
c. 7 ..... iv. 88, 110, 441
c. 11 ..... ii. 735
27 Eliz.
c. 4 ..... i. 498
c. 5 ..... iii. 501
c. 6 ..... iii. 522, 524
c. 13 ..... iv. 351
31 Eliz.
c. 1 ..... ii. 432
c. 2 ..... i. 562

31 Eliz.
c. 3 ..... iii. 606
c. 4 ..... ii. 629; iv. 430
c. 5 .. iii. 479; iv. 273, 365
c. 6 ..... ii. 693, 720
c. 11 ..... iii. 244
c. 12 ..... ii. 75
39 Eliz.
c. 4 .. i. 148; iii. 122, 201; iv. 449
c. 5 ..... iii. 27, 70
c. 9 ..... iv. 84
c. 17 ..... iv. 288
43 Eliz.
c. 2 .. iii. 44, 56, 57, 63, 64, 66, 247
c. 4 ..... iii. 71, 72, 74
c. 12 ..... ii. 128; iii. 317
48 Eliz.
c. 2 ..... ii. 230, 290
c. 4 ..... i. 461
c. 8 ..... ii. 199
c. 29 ..... ii. 735
1 Jac. 1,
c. 1 ..... ii. 434
c. 8 ..... iv. 65
c. 12 ..... iv. 211
c. 13 ..... ii. 342
c. 17 ..... ii. 210
c. 25 ..... i. 79; ii. 585
c. 31 ..... iii. 168
2 Jac. 1, c. 28 ..... i. 90
3 Jac. 1,
c. 3 ..... iv. 196
c. 21 ..... iii. 201
4 Jac. 1,
c. 1 ..... ii. 504; iv. 431
c. 3 ..... iii. 575, 608
c. 5 ..... iv. 281
7 Jac. 1, c. 4 ..... iii. 44
21 Jac. 1,
c. 1 .. ii. 735; iii. 70, 469
c. 2 ..... iii. 469
c. 3 .... ii. 25, 35; iv. 188
c. 7 ..... iv. 281
c. 8 ..... iv. 293
c. 15 ..... iii. 244
c. 16 ..... iii. 390, 468, 475—478, 481
c. 17 ..... ii. 91
c. 19 ..... i. 250
c. 23 ..... iii. 630, 653
c. 27 ..... iv. 284
c. 28 .. i. 143; ii. 585; iv. 398
1 Chas. 1,
c. 1 ..... iv. 213
1 Chas. 1,
c. 7 ..... ii. 391
3 Chas. 1 .. i. 145, 166; ii. 469, 592
c. 1 ..... iv. 214
16 Chas. 1,
c. 1 ..... ii. 323
c. 6 ..... iii. 484
c. 7 ..... ii. 324
cc. 8, 9 ..... ii. 562
c. 10 .. i. 145; iii. 324; iv. 310, 372
c. 20 ..... i. 192, 193
c. 21 ..... iv. 183
c. 27 ..... ii. 330
12 Chas. 2,
c. 1 ..... ii. 324, 391
c. 4 ..... ii. 562
c. 13 ..... ii. 9
c. 18 ..... iii. 144
c. 24 ,, i. 139, 163, 204, 207, 208, 210, 223, 470; ii. 295, 310, 537, 538, 584; iii. 440; iv. 183
c. 30 ..... ii. 329
c. 35 ..... ii. 569
13 Chas. 2,
c. 1 ..... ii. 335; iv. 183
c. 2 ..... ii. 330
c. 6 ..... ii. 499, 586
c. 7 ..... ii. 324
c. 9 ..... ii. 598
c. 14 ..... ii. 324
14 Chas. 2,
c. 3 ..... ii. 586
c. 4 ..... ii. 684, 704, 707
c. 11 ..... ii. 500
c. 12 .... iii. 44, 45, 58, 315
c. 21 ..... ii. 627, 634
c. 23 ..... ii. 128; iii. 317
15 Chas. 2,
c. 4 ..... ii. 586
c. 9 ..... ii. 526, 559
c. 17 ..... i. 614
16 Chas. 2, c. 2 ..... ii. 323, 473
16 & 17 Chas. 2,
c. 3 ..... iii. 524
cc. 10, 12 ..... ii. 460
17 Chas. 2,
c. 3 ..... i. 460; ii. 736
c. 7 ..... iii. 616, 617
c. 17 ..... iii. 592
c. 19 ..... iv. 323
18 & 19 Chas. 2, c. 3 ..... i. 148
19 Chas. 2, c. 4 ..... iii. 60
19 & 20 Chas. 2,
c. 3 ..... ii. 66

19 & 20 Chas. 2,
c. 5 ..... ii. 50
c. 16 ..... i. 255
22 Chas. 2,
c. 1 .....ii. 707, 708
c. 13 .....ii. 508
22 & 23 Chas. 2,
c. 1 .....ii. 391; iv. 80
c. 10 .....ii. 209
cc. 14, 17 ..... ii. 732
c. 25 ..... ii. 20
29 Chas. 2,
c. 3 ..i. 287, 379, 380, 432, 450, 494, 507, 512, 513, 515, 517, 523, 526, 535, 596, 598; ii. 51, 70, 105, 188, 209, 593; iii. 572, 587
c. 7 .. iii. 385; iv. 213, 214, 347
c. 8 .....ii. 733, 736
c. 9 ..... ii. 705; iv. 207
30 Chas. 2, c. 3.....ii. 467
30 Chas. 2, st. 2, ...ii. 338
31 Chas. 2,
c. 1 .....ii. 592
c. 2 i. 101, 149, 150; ii. 469; iii. 648; iv. 183, 357, 449, 470
c. 3 ..... i. 145
1 Jac. 2, c. 17 ..... ii. 212; iii. 45
1 Will. & Mar.
c. 1 .....ii. 325
c. 2 ..... i. 460
c. 5 ..... i. 88
c. 6 .....ii. 397
c. 8 .....ii. 401
c. 16 .....ii. 720
c. 18 .....ii. 707, 708
c. 21 .....iv. 159, 320
c. 26 .....ii. 716
c. 30 .....iv. 549
1 Will. & Mar. sess. 2,
c. 1 ..... iv. 357
c. 2 i. 69, 146, 166; ii. 326, 341, 374, 399, 441, 470, 472; iii. 661; iv. 444, 475
2 Will. & Mar. sess. 1,
c. 5 .... iii. 250, 254, 256
c. 7 ..... ii. 374, 375
c. 8 ..... iii. 640
2 Will. & Mar. sess. 2, c. 2..ii. 389
3 Will. & Mar.
c. 9 ..... iv. 110, 127
c. 11 .....iii. 45, 54, 63
c. 14 ..... i. 433
4 Will. & Mar.
c. 1 .....ii. 559
c. 2 .....ii. 181
4 Will. & Mar.
c. 4 ..... iii. 580
c. 16 ..... i. 307
c. 18 ..... iv. 378, 437
c. 20 ..... i. 252; iii. 573
c. 22 ..... iv. 383
c. 24 ..... iii. 524
5 Will. & Mar.
c. 6 ....ii. 549
c. 20 ..... iii. 222
5 & 6 Will. & Mar.
c. 11 ..... iv. 386
c. 13 ..... iv. 476
c. 20 ..... iii. 10
c. 21 ..... ii. 571
6 & 7 Will. & Mar.
c. 2 ..... ii. 326, 394
c. 3 ..... iv. 420, 421
7 & 8 Will. & Mar.
c. 3 ..ii. 484; iv. 154, 163, 304, 305, 369, 416, 425, 426, 431
c. 4 .....iv. 427
c. 6 .....ii. 741
c. 14 .....ii. 393
c. 24 .....iv. 183
c. 25 .....ii. 322, 364
c. 27 .....ii. 392
c. 36 .....iv. 383
c. 37 ..... i. 460; iii. 71
c. 38 .....ii. 181
8 & 9 Will. & Mar.
c. 11 ..ii. 111; iii. 375, 592, 608
c. 20 ..... iii. 222
c. 26 .....iv. 454
c. 30 ..... ii. 230; iii. 46
c. 33 .....iv. 386
9 & 10 Will. 3,
c. 11 ..... iii. 46
c. 15 ..... iii. 261, 262
c. 17 .....ii. 115, 122
c. 32 .....iv. 209
c. 35 .....iv. 202
10 Will. 3,
c. 17 .....iv. 275
cc. 25, 26 .....iv. 365
11 Will. 3,
c. 4 .....ii. 291
c. 6 ..... i. 441
c. 7 .....iv. 220
c. 12 .....iv. 364
c. 16 ..... i. 139, 331
c. 20 .....ii. 518
12 & 13 Will. 3,
c. 2 .. ii. 388; iii. 341; iv. 301, 339, 342, 397, 399, 411, 441, 471, 473, 478

12 & 13 Will. 3,
c. 3 .....i. 425; ii. 344
13 & 14 Will. 3, c. 6 ..... ii. 401
1 Ann.
c. 7 .....i. 622; ii. 534
c. 8 ....., ii. 393, 473
cc. 13, 14 ..... ii. 564
c. 24 ..... ii. 293
1 Ann. st. 2.
c. 9 .....iv. 431
c. 17 .....iv. 162
c. 18 ..... ii. 228
2 & 3 Ann.
c. 1 ..... i. 613
c. 5 ..... ii. 181
c. 11 .....i. 460; ii. 534
c. 18 ..... ii. 344
c. 20 ..... ii. 534
3 & 4 Ann.
c. 8 ..ii. 115, 122, 123, 393, 471
c. 16 .. i. 565, 574; iii. 451, 476, 478, 501, 502, 522, 575
c. 17 ..... ii. 146
5 Ann.
c. 5 ..... i. 88
c. 6 .....iv. 441, 448
c. 8 .....i. 87, 88; ii. 399
c. 16 ..... i. 249, 470, 490
c. 17 ..... i. 612
6 Ann.
cc. 6, 7... i. 87; ii. 162, 183, 367, 368, 393, 441
c. 16 ..... ii. 78
c. 18 .. i. 255, 337; iii. 400
c. 21 .....iv. 420, 421
c. 22 ..... iii. 222
c. 23 .... i. 87, 88; ii. 331; iv. 184
c. 24 ..... ii. 733
c. 35 ..... i. 613
c. 53 ..... i. 87
c. 63 ..... ii. 347
7 Ann.
c. 5 .....ii. 408, 411
c. 10 ..... iii. 247, 297
c. 12 ..... ii. 489
c. 18 ..... iii. 469
c. 21 ..... i. 446; iv. 455
c. 25 .....ii. 115, 122
8 Ann.
c. 14 .... iii. 250, 256, 431, 583
c. 18 ..... iii. 250
c. 19 ..... ii. 34
9 Ann.
c. 5 ..... ii. 369
c. 6 ..... ii. 562
9 Ann.
c. 14 .. iii. 252; iv. 273, 274
c. 15 ..... ii. 459
c. 20 ..... iii. 575, 641
c. 30 ..... ii. 228
10 Ann.
c. 5 ..... ii. 411
c. 23 ..... ii. 365
11 Ann. st. 1, c. 18.....iii. 533
12 Ann. st. 1,
c. 16 ..... ii. 91
c. 18 ..... iii. 46
12 Ann. st. 2,
cc. 5, 6 ..... ii. 742
c. 12 ..... ii. 720
c. 14 ..... ii. 716; iii. 419
c. 23 ..... iii. 201
13 Ann. c. 11 ..... ii. 693, 720
c. 13 ..... iii. 419
1 Geo. 1, st. 2,
c. 5 ..... iv. 49
c. 10 .....ii. 536, 682, 732
c. 12 ..... ii. 562
c. 13 .....ii. 338, 401, 622
c. 19 ..... ii. 193
c. 37 ..... ii. 394
c. 49 .....iv. 197
c. 51 ..... ii. 471
c. 56 ..... ii. 367
3 Geo. 1,
c. 7 ..... ii. 562
c, 8 ..... iii. 225
c. 10 ..... ii. 534
c. 11 .....iv. 441
c. 15 ....i. 133; ii. 631, 632
5 Geo. 1, c. 8 .....ii. 590; iii. 56
6 Geo. 1,
c. 5 ..... i. 96
c. 18 ..... ii. 129
c. 19 ..... iii. 122
c. 23 .....iv. 441
8 Geo. 1,
c. 15 ..... ii. 129
c. 24 .....iv. 220
9 Geo. 1,
c. 7 ....ii. 645, 697; iii. 63
c. 22 .....iv. 3, 101
c. 29 ..... i. 637
11 Geo. 1,
c. 4 .....iii. 631
c. 7 ..... ii. 562
c. 18 ..... ii. 181
c. 30 ..... ii. 129
12 Geo. 1, c. 28 ..... i. 100
2 Geo. 2,
c. 22 .....iii. 504
c. 24 .....ii. 359, 373
c. 28 .....iv. 220
3 Geo. 2, c. 29 ..... iii. 46

4 Geo. 2,
c. 21 ..... ii. 408
c. 26 .....iv. 371
c. 28 .. i. 295, 524, 677; iii. 246, 256, 625, 626
5 Geo. 2, c. 18 ..... ii. 647
7 Geo. 2,
c. 13 ..... ii. 41
c. 15 ..... i. 76
c. 16 ..... ii. 367
c. 20 ..... i. 306; iii. 451
8 Geo. 2,
c. 6 ..... i. 613
c. 13 ..... ii. 43
c. 16 .....iv. 351
c. 24 .....iii. 504
c. 30 ..... ii. 374
9 Geo. 2,
c. 4 ..... i. 69
c. 5 .....iv. 211
c. 36 ..i. 461, 463, 594, 595; iii. 71
10 Geo. 2, c. 28 .....iii. 201
11 Geo. 2,
c. 17 .....iii. 419
c. 18 ..... iii. 253
c. 19 ..i. 261, 295, 470, 678; ii. 216; iii. 250, 252, 255—257, 396, 402, 422, 431, 615, 617, 624
c. 24 ..... ii. 344
12 Geo. 2,
cc. 7, 12..... ii. 454
c. 27 .....iii. 351
c. 28 .....iv. 275
c. 29 ..... i. 129
13 Geo. 2,
c. 2 .....ii. 412
c. 7 ..... ii. 411
c. 8 .....ii. 228
c. 17 ..... ii. 356
c. 18 .....iv. 275
14 Geo. 2, c. 20.... i. 249, 450, 571
15 Geo. 2,
c. 13 ..... iii. 222, 225
c. 22 ..... ii. 367
c. 28 .....iv. 454
c. 30 ..... ii. 241
17 Geo. 2,
c. 3 ..... iii. 66
c. 5 ..... iii. 58
c. 38 .. ii. 202; iii. 67, 247
c. 39 ..... i. 446; iv. 455
18 Geo. 2,
c. 15 ..... iii. 206
c. 18 .....ii. 352
c. 20 .....ii. 645, 647
c. 30 .....iv. 221
c. 34 ..... iv. 273, 275
19 Geo. 2,
c. 21 .....iv. 209
c. 22 .....ii. 501
c. 37 ..... ii. 93, 130, 137
20 Geo. 2,
c. 19 .....ii. 218, 231
c. 30 .....iv. 425
c. 42 ..... i. 85, 91
c. 43 .....i. 204; ii. 624
c. 44 ..... ii. 411
21 Geo. 2, c. 19 .....ii. 367
22 Geo. 2, c. 33 .....ii. 596
24 Geo. 2,
c. 4 ..... iii. 225
c. 18 .....iii. 522
c. 24 .....ii. 477
c. 44 ..... ii. 653; iv. 346
c. 48 ..... ii. 626; iii. 484
25 Geo. 2,
c. 6 ..... i. 598
c. 36 ..... iii. 194; iv. 273
c. 37 ..... iv. 75
c. 39 ..... i. 441
26 Geo. 2,
c. 26 .....ii. 412
c. 27 .....ii. 645
c. 33 ..i. 208; ii. 238, 240, 246
27 Geo. 2,
c. 1 .....ii. 412
c. 3 .....iv. 435
c. 6 .....ii. 228
28 Geo. 2,
c. 6 .....ii. 743
c. 19 ..... iii. 194
29 Geo. 2, c. 36 ..... i. 654
31 Geo. 2,
c. 2 .....ii. 231
c. 41 ..... i. 654
1 Geo. 3,
c. 13 .....ii. 647
c. 23 ..ii. 392, 471, 473, 623; iii. 341
2 Geo. 3,
c. 1 .....ii. 445
c. 15 ..... iii. 166; iv. 214
4 Geo. 3, c. 25 .....iii. 225
5 Geo. 3,
c. 17 .....iii. 431
c. 26 ..... i. 100
c. 27 .....ii. 630
c. 39 ..... i. 100
6 Geo. 3,
c. 12 ..... i. 104
c. 25 .....ii. 228, 231
c. 53 .....ii. 401
7 Geo. 3,
c. 7 .....ii. 508
c. 9 .....ii. 647
c. 21 .....ii. 645

7 Geo. 3,
c. 38 ..... ii. 41
9 Geo. 3, c. 16..ii. 451, 483; iii. 469
10 Geo. 3,
c. 30 ..... ii. 345
c. 42 ..... i. 654
12 Geo. 3,
c. 11 .....iv. 184
c. 20 .. ..iv. 392
c. 24 .... iv. 195, 365
13 Geo. 3,
c. 21 ..... ii. 408
c. 25 ..... ii. 411
c. 51 .....i. 85
c. 63 ..i. 111; ii. 96; iii. 630; iv. 365
c. 78 .....iii. 533
c. 81 ..... i. 654
c. 82 ..... iii. 70
14 Geo. 3,
c. 20 .....iv. 435
c. 48 .....ii. 137, 138
c. 58 ..... ii. 369
c. 78 ..... ii. 236
15 Geo. 3,
c. 33 ..... ii. 445
c. 53 ..... ii. 35, 40
17 Geo. 3,
c. 30 ..... ii. 127
c. 53 .....ii. 691, 734, 736
c. 56 .....ii. 228
c. 57 ..... ii. 41
18 Geo. 3,
c. 12 ..... i. 104
c. 19 ..... iv. 435
c. 33 ..... iii. 165
c. 47 .....ii. 230
c. 60 .....ii. 708
19 Geo. 3,
c. 44 .....ii. 707, 708
c. 74 .....iv. 441
20 Geo. 3, c. 25 .....ii. 366
21 Geo. 3,
c. 49 .....iv. 214
c. 60 ..... iii. 225
c. 66 .....ii. 691, 736
22 Geo. 3,
c. 41 ..... ii. 365
c. 46 .....i. 104; ii. 367
c. 82 ..... ii. 369
c. 83 ..... iii. 47
23 Geo. 3,
c. 23 ..... iii. 60
c. 56 ..... iv. 4, 288
24 Geo. 3,
c. 25 .....i. 41
c. 26 ..... ii. 372
c. 35 ..... ii. 661
c. 44 .....iii. 480
25 Geo. 3, c. 35 .....iii. 665, 670
26 Geo. 3,
c. 31 ..... ii. 240
c. 71 .....iv. 283
c. 77 .....iv. 345
c. 84 ..... ii. 671
c. 86 .....i. 76
27 Geo. 3, c. 13 .....ii. 562, 579
28 Geo. 3,
c. 30 ..... iii. 201
c. 52 ..... ii. 359
c. 56 ..... ii. 129
30 Geo. 3,
c. 10 ..... ii. 382
c. 48 .....iv. 164
31 Geo. 3,
c. 32 ..... ii. 709
c. 42 .....iv. 3
32 Geo. 3,
c. 48 .....iv. 308
c. 56 ..... ii. 233
c. 57 ..... ii. 231
c. 58 ..... ii. 483; iii. 641
c. 60 .....iii. 381
c. 69 ..... ii. 579
33 Geo. 3,
c. 13 ..... i. 72; ii. 388
c. 35 ..... iii. 56
cc. 41, 43 ..... ii. 367
c. 54 .... ii. 202
c. 55 ..... ii. 231
34 Geo. 3,
c. 61 ..... iv. 214
c. 75 ..... i. 622
c. 83 ..... ii. 359
35 Geo. 3,
c. 46 .....iv. 345
c. 63 ..... ii. 130
c. 101..... iii. 46, 60
36 Geo. 3,
c. 7 ..... iv. 147, 163
c. 52 ..... ii. 48, 571, 572
37 Geo. 3,
c. 45 ..... iii. 224
c. 70 ..... iv. 197, 365
c. 123..... iv. 197, 198
c. 126..... iv. 193
c. 127..... ii. 392, 393
c. 142..... i. 114
38 Geo. 3,
c. 5 ..... ii. 559
c. 52 ..... i. 133; iv. 366
c. 60 ..... i. 622
c. 65 .....iii. 413
c. 71 ..... ii. 41
39 Geo. 3,
c. 39 ..... iv. 312
c. 79 ..iii. 192, 193; iv. 198
c. 87 ..... ii. 196

39 & 40 Geo. 3,
c. 14 ..... ii. 392
c. 28 ..... iii. 222, 225
c. 67 ..... i. 96; ii. 331, 347, 367, 399
c. 77 ..... ii. 228
c. 79 ..... i. 114
c. 88 ..... i. 447, 622; iv. 445, 534
c. 93 ..... iv. 420, 455
c. 94 ..... iii. 117; iv. 393
c. 98 ..... i. 555; ii. 13
c. 99 ..... ii. 81
41 Geo. 3,
c. 23 ..... iii. 67
c. 63 ..... ii. 367, 663, 694
c. 78 ..... ii. 657
c. 90 ..... ii. 389; iii. 669
c. 107 ..... ii. 35, 36
c. 109 ..... i. 655
42 Geo. 3,
c. 46 ..... ii. 230
c. 71 ..... iii. 178
c. 79 ..... iii. 215
c. 85 ..... iv. 364
c. 90 ..... ii. 587, 591
c. 116 ..... i. 622; ii. 559
c. 119 ..... iv. 273
43 Geo. 3,
c. 25 ..... ii. 365
c. 30 ..... ii. 708
c. 46 ..... iii. 575
c. 58 ..... iv. 66, 284
c. 74 ..... ii. 373
c. 75 ..... i. 478; iii. 458
c. 84 ..... ii. 736
c. 99 ..... ii. 567, 568; iii. 663 iv. 330
c. 107 ..... ii. 534, 691, 734
c. 108 ..... i. 460; ii. 691
c. 160 ..... i. 18
c. 161 ..... ii. 568
44 Geo. 3,
c. 48 ..... ii. 660
c. 54 ..... ii. 587, 588
c. 98 ..... i. 502
45 Geo. 3,
c. 28 ..... ii. 571
c. 84 ..... ii. 534
c. 123 ..... i. 100
46 Geo. 3,
c. 37 ..... iii. 537
c. 54 ..... iv. 312
c. 151 ..... i. 622
c. 158 ..... ii. 501
47 Geo. 3, c. 24 ..... i. 447, 622
47 Geo. 3, sess. 3,
c. 25 ..... ii. 592
c. 45 ..... ii. 445
47 Geo. 3, sess. 3,
c. 74 ..... i. 434
48 Geo. 3,
c. 4 ..... iii. 223
c. 58 ..... iv. 345, 382
c. 73 ..... i. 622
c. 75 ..... iv. 285
c. 88 ..... ii. 126
c. 96 ..... iii. 113
c. 106 ..... i. 72
c. 124 ..... iii. 60
c. 141 ..... ii. 568
c. 151 ..... i. 87
49 Geo. 3,
c. 91 ..... iii. 351
c. 126 ..... ii. 45, 621; iv. 188
50 Geo. 3,
c. 59 ..... iv. 188
c. 73 ..... iv. 214
51 Geo. 3,
c. 1 ..... ii. 478
c. 36 ..... ii. 499
c. 65 ..... iii. 192, 193
c. 100 ..... i. 134
c. 115 ..... ii. 691, 734
c. 118 ..... ii. 587
52 Geo. 3,
c. 11 ..... ii. 347
c. 31 ..... iv. 288
c. 101 ..... i. 461; iii. 73, 99
c. 102 ..... iii. 73
c. 104 ..... iv. 198, 199
c. 144 ..... ii. 367, 372
c. 146 ..... iii. 231—233
c. 155 ..... ii. 708
c. 160 ..... iii. 60
c. 161 ..... i. 622, 623
53 Geo. 3,
c. 24 ..... ii. 615; iii. 331
c. 40 ..... ii. 228
c. 48 ..... ii. 364
c. 108 ..... iv. 365
c. 115 ..... iv. 276
c. 127 ..... ii. 741; iii. 311, 313, 316
c. 141 ..... ii. 94
c. 155 ..... i. 111
c. 159 ..... i. 76; iii. 164
c. 160 ..... ii. 708
54 Geo. 3,
c. 91 ..... iii. 43
c. 96 ..... ii. 229, 231
c. 108 ..... ii. 467
c. 144 ..... ii. 367
c. 145 ..... i. 210, 446; iv. 458
c. 146 ..... iv. 164
c. 156 ..... ii. 36
c. 159 ..... ii. 501; iv. 276
c. 173 ..... ii. 559

55 Geo. 3,
c. 16 ..... iii. 225
c. 50 ..... iv. 435
c. 51 ..... i. 129
c. 127..... iii. 478
c. 134..... ii. 549
c. 137..... iii. 57
c. 147 .. i. 460; ii. 691, 736
c. 168..... ii. 591
c. 184 .... i. 484; ii. 571; iv. 365
c. 190..... i. 622, 623
c. 192..... i. 639, 640
c. 194..... iii. 206, 207
56 Geo. 3,
c. 50 .. ii. 216; iii. 250, 584
c. 52 ..... ii. 734
c. 96 ..... iii. 225
c. 97 ..... iii. 228
c. 98 ..... ii. 578, 579
c. 100 .... i. 101, 145, 146; ii. 469; iii. 650, 651; iv. 357
c. 139..... ii. 230, 231
57 Geo. 3,
c. 3 ..... i. 147
c. 6 ..... iv. 163
c. 7 ..... iv. 197, 365
c. 19 ..... iv. 198
c. 35 ..... i. 147
c. 48 ..... ii 574
c. 52 .....iii. 396
cc. 62, 63, 84..... ii. 367
c. 93 ..... iii. 256
c. 99 ..... ii. 736
c. 117..... iii. 667, 668
58 Geo. 3,
c. 21 ..... iii. 73
c. 45 .. i. 122; ii. 247, 697, 700, 747
c. 69 ..... ii. 121
c. 70 ..... i. 425
c. 51 ..... ii. 228
c. 68 ..... i. 121
c. 69 ..... iv. 425
c. 93 ..... ii. 95
c. 95 ..... ii. 636
c. 113..... iii. 60
59 Geo. 3,
c. 12 .. i. 122; ii. 290, 697; iii. 17, 47, 56, 58, 396
c. 19 ..... ii. 574; iii. 224
c. 46 ..iii. 443; iv. 380, 416
c. 49 .....iv. 193
c. 60 .. i. 102; ii. 660, 671
c. 69 .....iv. 196
c. 76 ..... iii. 224
c. 80 ..... i. 474; iii. 458
c. 81 ..... iii. 73
59 Geo. 3,
c. 85 ..... i. 121
c. 91 ..... iii. 73
c. 94 ..... i. 447
c. 134.. i. 122, 123; ii. 247, 700, 701
60 Geo. 3 & 1 Geo. 4,
c. 1 ..... i. 150
c. 4 ..... i. 184; iv. 420
c. 9 ..... iii. 193
c. 14 ..... i. 134
1 Geo. 4,
c. 4 .....iv. 282
c. 6 ..... ii. 736
c. 55 .....iii. 353
c. 57 .....iv. 448
c. 87 .....iii. 626
c. 90 ..... iv. 66
c. 93 .....ii. 228
c. 116..... ii. 4, 288
1 & 2 Geo. 4,
cc. 42, 43 ..... ii. 367
c. 46 .....iv. 128
c. 50 .....iv. 214
c. 66 ..... i. 105
c. 75 .....iv. 365
c. 76 ..... ii. 499, 545
c. 78..... ii. 124
c. 79 ..... iii. 166
c. 92 ..... iii. 73
c. 121.....iii. 665
3 Geo. 4,
c. 46 .....iv. 292
c. 71 .....iv. 283
c. 72 .... i. 123; ii. 747; iii. 73
c. 75 .....ii. 249
c. 88 .....ii. 568
c. 92 ..... ii. 96
c. 116.....iv. 214
c. 126.. iii. 129, 131, 132, 138 —142, 480
4 Geo. 4,
c. 5 .....ii. 249
c. 16 ..... iii. 138
c. 17 ..... ii. 246, 249
c. 18 .....ii. 534
c. 27 .....ii. 645
c. 29 .....ii. 281
c. 31 ..... iv. 50
c. 34 ..... ii. 228, 231
c. 44 .....iv. 4
c. 48 .....iv. 443
c. 52 ..... ii. 641; iv. 62
c. 54 .....iv. 125
c. 60 ..... iii. 123; iv. 275
c. 64 .....iv. 365
c. 71 ..... i. 114
c. 74 .....iv. 292

4 Geo. 4,
c. 76 .. i. 208; ii. 238, 240, 246—251, 257, 258, 300, 312, 670
c. 83 ..... ii. 78, 297
c. 88 ..... iii. 187
c. 91 ..... ii. 249, 258
c. 95 .... iii. 138—140, 142
5 Geo. 4,
c. 32 ..... ii. 247
c. 33 ..... iv. 111
c. 39 ..... i. 463
c. 64 ..... iii. 166
c. 69 ..... iii. 138
c. 74 ..... ii. 518
c. 83 .. ii. 267, 291; iii. 57, 58; iv. 211, 275, 289
c. 84 ..iii. 126; iv. 450, 475
c. 89 ..... ii. 691, 736
cc. 95, 96 ..... ii. 228
c. 103 ..... ii. 747
c. 113..... i. 109; iv. 221
c. 114..... ii. 129
6 Geo. 4,
c. 8 .....ii. 691, 736
c. 12 ..... ii. 518
c. 16 .....ii. 147, 168
c. 17 ..... i. 477
c. 25 .....iv. 476
c. 32 ..... ii. 559
c. 34 ..... i. 100
c. 37 ..... iii. 54
c. 50 .. i. 228, 625; ii. 471; iii. 516—518, 520—522, 524—526, 528, 562; iv. 308, 362, 368, 419—423
c. 53 ..... ii. 511
c. 67 ..... ii. 412
c. 69 .....iv. 451
c. 74 .. i. 478; ii. 305; iii. 458
c. 78 ..... iii. 169, 170
c. 81 ..... iii. 195
c. 82 .. ii. 45, 621; iii. 332; iv. 188
c. 83 .. ii. 45, 621; iv. 188
c. 85 ..... i. 114
c. 88 .....ii. 688
c. 92 .....ii. 247
c. 94..... ii. 78, 84
c. 105.... ii. 500; iii. 144; iv. 193
c. 133..... iii. 206
7 Geo. 4,
c. 6 ..... ii. 126
c. 16 ..... ii. 593; iv. 146
c. 21 .....iv. 125
c. 34 ..... iii. 166
7 Geo. 4,
c. 37 ..... i. 114
c. 46 ..... iii. 225
c. 63 .....iii. 352
c. 64..i. 134; ii. 640; iv. 44, 352, 363, 365, 366, 400, 401, 419, 428, 435, 436
c. 66 ..... ii. 691, 734, 736
c. 75 ..... ii. 94
7 & 8 Geo. 4,
c. 18 ..... iv. 96
c. 24 ..... iii. 131, 138
c. 27..ii. 7; iv. 80, 101, 109, 110, 122, 125, 127, 128, 130, 139, 351, 430
c. 28 .. ii. 610; iv. 75, 391, 392, 404, 406, 424, 441, 443, 444, 460, 471
c. 29..ii. 7; iv. 107, 109, 110, 122, 124, 129, 130, 132, 337, 347
c. 30 .... ii. 649; iv. 4, 139
c. 31 ....i. 126; ii. 545; iii. 480; iv. 75
c. 53 ..i. 99; ii. 568; iii. 195; iv. 365
c. 64 ..... iv. 292, 406
c. 71 ..... iii. 653
c. 72 ..... ii. 747
c. 75 ..... ii. 559, 595
9 Geo. 4,
c. 14 ..ii. 50, 56, 63, 71, 105 iii. 428, 477
c. 15 .....iv. 371
c. 23 ..... iii. 227
c. 31 ..ii. 311; iv. 59, 78, 83, 88, 93, 94, 151, 187, 283, 325, 331, 364
c. 32 .... iii. 533; iv. 143, 473
c. 33 .....iii. 533
c. 39 ..... iii. 165
c. 40 ..... iii. 60
c. 43 ..... i. 127; ii. 649
c. 47 .....ii. 568
c. 58 ..... iv. 66
c. 61 ..... i. 134; iii. 195
c. 69 .. ii. 20; iv. 285—287
c. 74 ..... i. 114
c. 77 ..... iii. 138, 139
c. 78 ..... i. 478; iii. 458
c. 83 ..... i. 105
c. 84 ..... i. 109
c. 85 .....i. 463; iii. 74
c. 92 ..... iii. 82
c. 94 .....ii. 722

10 Geo. 4,
c. 7 .. ii. 709, 367; iv. 186
c. 10 ..... ii. 587
c. 26 ..... ii. 597
c. 27 ..... ii. 519
c. 44 ..... ii. 365, 367
c. 46 ..... i. 127; ii. 649
c. 52 ..... ii. 228
c. 59 ..... iii. 132
11 Geo. 4 & 1 Will. 4,
c. 18 ..... ii. 247
c. 20 ..... i. 598; ii. 146
c. 36 ..... iii. 602
c. 39 ..... iv. 450
c. 40 ..... ii. 208
c. 43 ..... ii. 393, 571
c. 46 ..... i. 549
c. 47 ..... i. 433, 434
c. 55 ..... i. 110
c. 64 ..... iii. 196
c. 65 .. i. 221, 478, 637; ii. 318, 315; iii. 458
c. 66 .... iv. 142—144, 151
c. 68 ..... ii. 87, 88
c. 70 .... i. 85, 131; iii. 317, 331, 333, 338, 341, 484, 627; iv. 317
c. 73 ..... iii. 193
1 & 2 Will. 4,
c. 3 ..... iii. 484
c. 21 ..... iii. 575, 633, 636, 637
c. 22 ..... ii. 568, 571; iii. 180, 532, 630
c. 25 ..... iii. 138
c. 32 .. ii. 20, 21, 567; iv. 214
c. 37 ..... ii. 228
c. 38 ..... ii. 697, 747
c. 40 ..... ii. 657, 658
c. 42 ..... iii. 54
c. 45 .. ii. 584, 724, 734, 736, 746
c. 53 ..... iii. 590
c. 58 .... iii. 295, 590, 634
c. 60 .... i. 121; iii. 68, 74
2 & 3 Will. 4,
c. 10 ..... iii. 170
c. 16 ..... ii. 568
c. 33 ..... iii. 330
c. 34 .... iv. 189, 190, 193
c. 39 ..... iii. 339, 490
c. 40 ..... ii. 598
c. 45 .... i. 85, 98, 125, 129, 132, 228, 625; ii. 334, 351—353, 356—361, 364, 365, 375
c. 53 ..... iv. 146
c. 57 ..... iii. 74
c. 61 ..... ii. 747
c. 62 ..... iv. 450
2 & 3 Will. 4,
c. 63 .... i. 88; ii. 331, 347
c. 64 ..... ii. 358; iii. 34
c. 65 .... i. 88; ii. 351, 367
c. 69 ..... i. 474
c. 71 .. i. 45, 57, 684, 685, 689, 691
c. 75 .. iii. 213; iv. 75, 285
c. 80 ..... ii. 712
c. 88 .... i. 97; ii. 351, 359
c. 92 .. ii. 460, 527; iii. 307, 308, 346
c. 93 ..... iii. 317
c. 94 ..... iii. 330
c. 98 ..... ii. 122
c. 100 ..... ii. 727, 729
c. 105 ..... ii. 347, 382
c. 106 ..... i. 593
c. 110 ..... iii. 340
c. 111 ..... iii. 329
c. 115 ..... ii. 709; iii. 78
c. 116 ..... ii. 579; iii. 341
c. 120 .. ii. 571; iii. 180—182
c. 124 ..... iii. 138
c. 125 ..... i. 106
3 & 4 Will. 4,
c. 14 ..... iii. 82
c. 19 ..... ii. 267
c. 22 .... iii. 178, 296, 297
c. 23 ..... i. 210
c. 24 ..... ii. 579
c. 27 .. i. 306, 344, 465, 490, 509, 510, 567, 570; iii. 243, 246, 260, 361, 362, 389, 395, 397, 398, 408, 410, 415, 470—475, 480, 505, 577, 609
c. 36 ..... ii. 511
c. 41 .... ii. 460, 461, 527; iii. 307, 308, 346
c. 42 .. ii. 98, 133, 201, 628, 632; iii. 261, 366, 370, 425, 475, 478, 479, 481, 515, 552, 568, 570, 575
c. 45 ..... ii. 249
c. 48 ..... iii. 180, 181
c. 49 ..... ii. 389; iii. 536
cc. 54, 55, 59 ..... iii. 144
c. 65 ..... iii. 343
c. 71 ..... iii. 352
c. 72 ..... i. 110
c. 73 ..... i. 109, 583
c. 74 .. i. 224, 239, 251, 252, 319, 465, 476—478, 558, 559, 571, 572, 576—585, 640, 641; ii. 264, 265, 267; iii. 388, 458

3 & 4 Will. 4,
c. 75 ..... iii. 170
c. 80 ..... iii. 138
c. 82 ..... ii. 338
c. 83 ..... ii. 729
c. 85 ..... i. 110, 112
c. 86 ..... ii. 511
c. 90 ..... ii. 658
c. 93 ..... i. 114; iii. 147
c. 98 .. ii. 95, 524; iii. 225
c. 99 .... ii. 538, 626, 627, 631; iv. 299
c. 101 ..... ii. 563
c. 103 ..... iii. 178
c. 104 ..... i. 269, 484, 631
c. 105 .. i. 71, 270, 271, 275, 276, 279, 385
c. 106 .. i. 210, 388, 390—393, 411—413, 418, 420, 425, 431, 446, 543, 544, 681, 684
4 & 5 Will. 4,
c. 1 ..... iii. 178
c. 15 ..... ii. 529
c. 22 ..... i. 261, 678
c. 26 ..... iv. 75
c. 35 ..... ii. 230
c. 36 .. i. 128; iv. 312, 315, 316, 317, 364, 366
c. 39 ..... iii. 575, 613
c. 47 ..... iv. 317
c. 49 ..... ii. 519
c. 51 ..... ii. 569; iii. 195
c. 60 ..... ii. 559, 568
c. 62 ..... i. 131
c. 65 ..... iv. 451
c. 70 ..... ii. 347, 383
c. 76 .. i. 122; ii. 231, 291, 295, 300, 568, 699; iii. 48, 50—56, 58, 59, 62, 63, 67, 68, 74, 113, 247
c. 81 ..... iii. 138
c. 85 ..... iii. 196
5 & 6 Will. 4,
c. 18 ..... iii. 138, 140
c. 20 .. ii. 559, 567, 571; iii. 663
c. 24 ..... ii. 595
c. 33 ..... iv. 386
c. 38 .. ii. 619; iii. 122, 125
c. 41 ..... ii. 95; iv. 274
c. 45 ..... i. 110; iv. 144
c. 50 .. iii. 128—130, 132—139, 245, 480
c. 51 ..... i. 106; iv. 144
c. 52 ..... i. 114
c. 53 ..... iv. 325
c. 54 ..... ii. 244, 249
5 & 6 Will. 4,
c. 59 ..... iii. 255; iv. 283
cc. 60, 61 ..... i. 110
c. 62 ..... iii. 628
c. 63 ..... ii. 518, 519
c. 67 ..... i. 91
c. 69 .. ii. 697; iii. 17, 48, 68
c. 73 ..... iv. 321
c. 74 ..... iii. 311, 313
c. 75 .. .. ii. 722
c. 76 .. i. 125, 129, 133, 134, 474; ii. 229, 363, 367, 499, 636, 645, 654, 656—658, 663, 694, 716, 736, 741; iii. 10, 34—41, 293, 480; iv. 321, 338, 366
c. 84 ..... ii. 28, 32, 460
6 & 7 Will. 4,
c. 5 ..... i. 110
c. 11 ..... ii. 409
c. 12 ..... i. 127; ii. 649
c. 16 ..... i. 110
c. 19 ..... i. 131; ii. 669
c. 20 ..... ii. 736
c. 30 ..... iv. 443
c. 32 ..... iii. 89
c. 46 ..... i. 105
c. 58 ..... ii. 123
c. 63 ..... ii. 519
c. 64 ..... ii. 736
c. 65 ..... ii. 567
c. 70 ..... iii. 102
c. 71 .. i. 117, 678; ii. 462, 712, 731—733; iii. 259
c. 76 .... iii. 192, 193, 293
c. 77 .. i. 122, 474; ii. 676, 693, 716, 736, 748
c. 80 ..... ii. 559
c. 82 ..... i. 110
c. 85 .. ii. 247, 248, 250, 252—259, 300; iii. 50, 234
c. 86 .. ii. 251, 258; iii. 50, 232, 237
c. 87 .. i. 133; ii. 246, 669
c. 88 .. ii. 639, 640; iii. 37
c. 96 ..... iii. 66, 67
c. 103 ..... i. 91; iii. 34, 35
c. 104 .... iii. 35, 38, 39, 41
c. 105 .... ii. 499; iii. 35, 37
c 106 ..... iii. 299
c. 111 ..... iv. 432
c. 114 ..... iv. 425
c. 115 ..... i. 655
7 Will. 4 & 1 Vict.
c. 6 ..... i. 110
c. 17 ..... ii. 559
c. 19 ..... iii. 37; iv. 317

7 Will. 4 & 1 Vict.
c. 22 ..ii. 246, 247, 250, 251, 253, 255, 258; iii. 50, 234
c. 23 ..... iv. 444
c. 24 .....iii. 252
c. 26 ..i. 226, 238, 451, 472, 549, 589, 594, 595, 599—601, 604—606, 608, 609, 611, 636, 640; ii. 187, 189, 206, 208, 593
c. 28 ..... i. 306
c. 30 ..... iii. 341, 473
c. 33 .....ii. 570
c. 36 .. ii. 570; iv. 135, 137, 138, 365
c. 42 ..... i. 105; ii. 199
c. 45 .... i. 99, 121; iii. 66
c. 46 .....iii. 330
c. 49 ..... ii. 568; iii. 606
c. 53 .....ii. 669
c. 55 .....ii. 629
c. 62 ..... i. 110
c. 64 .....ii. 636
c. 67 .....ii. 228
c. 68 .....ii. 641
c. 69 .....ii. 731
c. 72 .....ii. 478
c. 73 ..... iii. 19
c. 77 ..... iv. 443, 479
c. 78 .. ii. 484; iii. 30, 34, 35, 37, 39—41, 293, 631, 642
c. 80 ..... ii. 95
c. 81 ..... ii. 656; iii. 39
c. 83 ..i. 615; ii. 383; iv. 320
c. 84 .....iv. 144
c. 85 ..... iv. 78, 83
c. 86 .... iv. 105, 110, 124
c. 87 ..... iv. 127, 128
c. 88 ..... iv. 221, 222
c. 89 ..... ii. 546; iv. 102
c. 90 ..... iv. 448, 450
c. 91 .. i. 110; iv. 197, 199; iii. 168

1 & 2 Vict.
c. 2 .....ii. 516, 580
c. 3 ..... i. 110
c. 4 ..... iv. 317
c. 14 ..... iii. 115
c. 16 ..... i. 131
c. 19 ..... i. 110
c. 20 .....ii. 534
c. 22 .....ii. 346
c. 23 .....ii. 534, 691
c. 29 .....ii. 691
c. 30 ..... i. 693
c. 31 ..... i. 474; ii. 736

1 & 2 Vict.
c. 32 .....ii. 716
c. 35 ..... iii. 40
c. 38 ..... iv. 287
cc. 39, 41 ..... i. 110
cc. 42, 43 ..... i. 549
c. 45 ..... iii. 590, 627
c. 47 ..... i. 110; iii. 201
c. 48 .....ii. 369
c. 50 ..... i. 105
c. 53 ..... i. 133
cc. 57, 58 .....ii. 559
c. 64 .....ii. 731
c. 67 ..... i. 106
c. 74 ..... i. 295; iii. 396
c. 77 ..... ii. 339; iii. 536
c. 80 .....ii. 658
c. 82 .... iii. 108, 126, 127
cc. 83, 84 .. .. i. 110
c. 94 .... i. 47; iii. 330; iv. 224
c. 95 .....ii. 534
c. 96 ..... iii. 224
c. 97 .....ii. 570
c. 98 .. ii. 570; iii. 182, 184
c. 102..... i. 110
c. 105.. ii. 711; iii. 529, 535
c. 106.. i. 122, 460; ii. 151, 534, 662, 663, 670, 673, 684, 689—696, 747, 749, 754; iii. 306
c. 107..ii. 247, 534, 734, 746, 754
c. 110..i. 250, 251, 311, 379, 631; ii. 98, 576; iii. 571, 573, 574, 584, 587
c. 120.....ii. 550

2 & 3 Vict.
c. 11 ....i. 252; ii. 168; iii. 573, 666
c. 12 .....iii. 192; iv. 198
c. 18 .....ii. 691
c. 22 .....iii. 351
c. 27 .....iii. 293
c. 29 .....ii. 168
c. 30 .....ii. 681, 754
c. 34 ..... i. 114
c. 37 ..... ii. 95
c. 46 ..... iii. 138
c. 47 .....ii. 644; iii. 140; iv. 273, 276, 283, 335
c. 49 .. i. 122; ii. 534, 734, 747, 754
c. 52 .....ii. 571
c. 54 .....ii. 295, 314
c. 57 ..... i. 110
c. 58 ..... ii. 550; iii. 299

2 & 3 Vict.
c. 59 ..... ii. 627
c. 60 ..... i. 433
c. 62 .. i. 123; ii. 727, 731, 732
c. 66 ..... iii. 180
c. 67 ..... i. 460
c. 70 ..... i. 105
c. 71 ..i. 365, 375, 644, 645, 650; ii. 291, 335, 357; iii. 51
c. 72 ..... i. 134
c. 73 ..... i. 110
c. 82 ..... i. 127; ii. 645
c. 84 ..... iii. 48, 64, 68
c. 93 ..... ii. 656
c. 94 .....ii. 365, 573
3 & 4 Vict.
c. 2 .....ii. 449
c. 5 .....iv. 275
c. 9 ..... ii. 344
c. 15 .....i. 123; ii. 732
c. 17 ..... ii. 568
c. 18 ..... ii. 588
c. 20 .....ii. 535, 734
c. 28 ..... ii. 656
c. 29 ..... iii. 171
c. 33 .. i. 102; ii. 671, 673; iii. 141, 142
c. 35 ..... i. 105
c. 38 ..... i. 252
c. 39 ..... iii. 138
c. 40 ..... i. 106
c. 47 ..... iii. 35
c. 51 ..... iii. 140
c. 54 ..... iii. 116
c. 56 ..... i. 114; iii. 147
c. 60 .....i. 460; ii. 747
c. 61 ..... iii. 196
c. 62 ..... i. 105
c. 65 ..... ii. 19; iii. 344
c. 66 .....iii. 345
c. 72 ..ii. 246, 250, 251, 255
c. 74 ..... iii. 35
c. 77 ..... iii. 99, 100, 106
c. 82 .....iii. 588
c. 83 ..... ii. 95
c. 84 .. i. 295; ii. 645; iii. 396; iv. 336
c. 86 ..ii. 672, 673, 693, 694; iii. 306, 310, 314, 315; iv. 428
c. 88 ..ii. 656—658; iii. 140
c. 89 ..... iii. 65
c. 90 ..... ii. 312
c. 92 ..... ii. 258; iii. 238
c. 93 .....iii. 317
c. 94 .....iii. 329
c. 96 ..... ii. 570
3 & 4 Vict.
c. 97 .... iii. 182, 183, 184
c. 110..... iii. 91
c. 113....i. 122; ii. 45, 670, 671, 674, 675, 676, 683, 691, 748—750; iii. 14
4 & 5 Vict.
c. 14 .....ii. 151, 663
c. 18 ..... i. 110
c. 20 .... ii. 568; iii. 195; iv. 330
c. 21 ..... i. 538, 539
c. 22 ..... ii. 610; iv. 441
c. 30 .....i. 87
c. 32 . ..... iii. 171
c. 33 ..... iii. 138
c. 35 .... i. 344, 642—645
c. 36 .....ii. 741; iii. 311, 313
c. 38 .. i. 461, 474; ii. 747; iii. 102—104
c. 39 ..ii. 534, 671, 674, 677, 691, 692, 734, 748, 751; iii. 14
c. 44 ..... i. 105
c. 45 .... iii. 178, 296, 297
c. 49 ..... iii. 129
c. 51 ..... iii. 132, 138
c. 52 .....iii. 329
c. 54 ..... ii. 95
c. 55 ....iv. 318
c. 59 ..... iii. 132, 141
5 Vict.
c. 5 ..ii. 615; iii. 329—331, 339, 462
c. 6 ..... i. 668
5 & 6 Vict.
c. 4 .. i. 102, 106; ii. 668
c. 7 ..... ii. 231
c. 12 ..... iii. 140
c. 13 ..... i. 106
c. 18 .. i. 123; iii. 17, 48, 68,
c. 22 ..... iii. 112
c. 25 .....ii. 568
c. 26 .....ii. 664, 691
c. 27 .....ii. 684, 737, 739
c. 29 ..... iii. 127
c. 32 ..... i. 572
c. 35 ..... ii. 573
c. 37 .....ii. 559, 568
c. 38 .. ii. 159, 648; iv. 318
c. 39 .....ii. 78; iv. 133
c. 45 ..... ii. 36—41, 460
c. 51 .... iv. 166, 420, 423
c. 55 ..... iii. 182—184
c. 57 ..... iii. 48

5 & 6 Vict.
c. 61 ..... i. 105
c. 69 .....iii. 463
c. 70 ..... ii. 593
c. 71 ..... iii. 81
c. 76 ..... i. 105
c. 79 .. ii. 191, 568; iii. 180, 181, 185
c. 80 ..... ii. 568
c. 84 ..... ii. 511
c. 86 .....iii. 339
c. 93 ..... ii. 568
c. 96 .....iii. 617
c. 97 .... i. 70; iii. 480, 574
c. 98 ..... i. 474; ii. 629; iii. 126
c. 100..... ii. 41
c. 103..... iii. 322, 329
c. 106..... iii. 166, 277
c. 108....ii. 684, 737—739; iii. 12
c. 109.. ii. 654, 655; iii. 128
c. 111..... iii. 41
c. 113..... ii. 249
cc. 118, 120 ..... i. 105
c. 122..... ii. 147
6 & 7 Vict.
c. 1 .....ii. 574
c. 7 ..... iv. 450, 476
c. 12 .....ii. 638
c. 13 ..... i. 105
c. 18 .. ii. 352, 354—356, 360, 361, 363, 367, 370, 373, 378; iii. 275
c. 20 .....iii. 332
c. 22 ..... i. 108
c. 23 ..... i. 642
c. 24 .....ii. 568, 573
c. 26 .. i. 110; iii. 125, 126
c. 29 ..... iv. 286
c. 30 ..... iii. 254, 255
c. 31 .....ii. 593
c. 34 .....i. 108; ii. 619
c. 35 ..... i. 106
c. 36 ..... iii. 64
c. 37 ..i. 122, 460; ii. 534, 697, 736, 747, 748, 751—753
c. 38 .. ii. 19, 460, 461, 527; iii. 307, 308, 346
c. 40 .....ii. 228
c. 45 ..... ii. 95
cc. 50, 53 ..... i. 110
c. 54 .....iii. 475
c. 65 ..... ii. 41
c. 67 .....iii. 633
c. 68 ..... iii. 201—203
c. 73 ..ii. 632; iii. 215—219, 276
6 & 7 Vict.
c. 77 .....ii. 748, 750
c. 79 ..... iii. 167
c. 80 .. i. 105, 114; iii. 147
c. 83 .....ii. 637, 640
c. 85 .. i. 600; iii. 534, 536; iv. 142
c. 86 ..... iii. 180, 182
c. 89 ..... iii. 35, 632, 642
c. 90 ..... iii. 215
c. 94 ..... i. 103
c. 96 .. iii. 382, 383; iv. 129
c. 98 ..... i. 110
7 & 8 Vict. c. 2 .. iv. 312, 364, 435
c. 3 .....iv. 273
c. 12 .....ii. 461
c. 15 ..... iii. 178
c. 17 ..... i. 106
c. 19 .....ii. 633
c. 22 .....ii. 524
c. 32 .... iii. 223, 225—228
c. 33 .. i. 129; ii. 649, 652
c. 37 ..... i. 461; ii. 464; iii. 103, 105
c. 45 .....ii. 708; iii. 80
c. 46 .....ii. 568
c. 49 .....ii. 570
c. 51 .....ii. 568
c. 53 .....ii. 334
c. 55 ..... i. 642
c. 56 ....i. 122; ii. 247, 747
c. 58 .....iv. 273
c. 59 ..... i. 695, 700
c. 61 ..... i. 127; ii. 358
c. 65 .....ii. 451
c. 66 ..... i. 478; ii. 410
c. 68 ..... iii. 233
c. 69 .. ii. 32, 34, 460, 461; iii. 307, 308, 346; iv. 285
c. 71 .... iv. 317, 320, 321
c. 74 ..... i. 105
c. 76 ..... i. 317
c. 83 ..... iii. 82
c. 85 ..... iii. 182—186
c. 86 ..... iii. 215
c. 87 .....iv. 283
c. 91 ..... iii. 138
c. 92 .....ii. 636
c. 94 .. i. 122; ii. 748, 750, 751, 752
c. 95 ..... iii. 165
c. 96 ..... iii. 250, 591
c. 101..ii. 230, 231, 267, 297, 298; iii. 43, 48, 50, 54, 56—58, 62—64, 67, 68, 107, 215, 516
c. 102..... ii. 710; iv. 163

7 & 8 Vict.
c. 105 ..... ii. 451; iii. 469
c. 108 ..... iii. 166
c. 113 ..... iii. 224
8 & 9 Vict.
c. 10 ..... ii. 299, 649
c. 11 ..... i. 85; ii. 626
c. 15 ..... ii. 568
c. 16 .... ii. 367; iii. 9, 259
c. 18 .... i. 165, 490; iii. 9
c. 20 .... ii. 88; iii. 9, 182, 184, 259
c. 22 ..... ii. 597
c. 26 ..... iii. 165
c. 27 ..... i. 839; iii. 81
c. 29 ..... ii. 20
c. 30 ..... ii. 461
c. 32 ..... i. 129
c. 36 ..... ii. 567
c. 42 .....ii. 88; iii. 182
c. 50 ..... i. 106
c. 56 ..... i. 474
c. 61 ..... iii. 138
c. 68 ..... iv. 464
c. 70 ..... ii. 697, 747
c. 71 ..... iii. 132
c. 75 .....iii. 382, 383
c. 76 ..... ii. 48, 571
c. 77 ..... ii. 228
cc. 84—87 ..... ii. 563
c. 88 ..... iii. 144, 145
c. 89 ..... ii. 50; iii. 144
c. 93 ..... ii. 37; iii. 144
c. 96 ..... iii. 182
c. 97 .. i. 478; ii. 198, 202, 305; iii. 458
c. 100.. ii. 512, 513; iii. 114, 117—120
c. 102..... ii. 95
c. 105.....iii. 329
c. 106.. i. 229, 281, 287, 317, 334, 350, 355, 464, 472, 475, 477, 480, 483, 499, 507, 510, 511, 513, 517, 523, 524, 526, 535, 539, 542, 551; iii. 389
c. 108..... iii. 166
c. 109....iii. 601; iv. 273, 274
c. 110..... i. 382
c. 113..... ii. 389; iii. 540
c. 114..... iv. 367, 435
c. 117..... iii. 48, 58
c. 118.. i. 123, 478, 516, 655 .. —657; ii. 305; iii. 103, 259, 458, 480
cc. 119, 124 ..... i. 485
9 & 10 Vict.
c. 3 ..... i. 105; iii. 166
c. 16 ..... iii. 186
c. 24 ..iv. 135, 136, 138, 146, 199, 221, 287, 316, 444, 464
c. 25 ..... iv. 276, 318
c. 33 ..... iii. 192; iv. 198
c. 35 ..... i. 105
c. 40 ..... iii. 178
c. 44 ..... iv. 141
c. 45 ..... i. 105
c. 48 ..... iv. 275
c. 54 .....iii. 275
c. 56 ..... ii. 567
c. 57 ..... iii. 182
c. 59 ..ii. 292, 699, 708, 710; iii. 79; iv. 182, 185, 196, 197
c. 62 ..... i. 663; ii. 552
c. 66 .... iii. 48, 58, 60, 61
c. 68 ..... ii. 747
c. 70 ..... i. 516, 655, 656
c. 73 ..... ii. 730, 731
c. 74 ..... iii. 178
c. 76 ..... ii. 347
c. 80 ..... iii. 165
c. 88 ..... ii. 45, 747
c. 93 .... iii. 370, 371, 439, 443; iv. 66
c. 95 .. i. 296; ii. 303, 628, 632, 647; iii. 162, 270, 281, 284—289, 299, 421, 480, 591, 652
c. 96 ..... iii. 174
c. 98 .....iii. 285
c. 103..... i. 105
c. 114..... iii. 166
10 & 11 Vict.
c. 1 ..... i. 105
c. 4 .....ii. 593
c. 14 ..... i. 663; iii. 259
cc. 16, 17 ..... iii. 9, 259
c. 21 .....ii. 374
c. 27 .... ii. 501; iii. 9, 259
c. 29 ..... iii. 178
c. 34 ..... iii. 9, 132, 259
c. 38 ..... i. 106; iii. 259
c. 42 .. ii. 568; iii. 181, 185
c. 44 ..... i. 105
c. 52 .....ii. 381, 347
c. 57 ..... i. 106
c. 61 ..... iii. 178
c. 63 .....ii. 598
c. 66 .....iv. 129
c. 67 .....iv. 450
c. 69 .....i. 615; ii. 383

10 & 11 Vict.
c. 71 ..... i. 105
c. 72 ..... iii. 138
c. 75 ..... iii. 166
c. 76 ..... ii. 501
c. 82 ..ii. 649; iv. 332, 333, 357, 436, 438, 459
c. 85 ..... ii. 571
cc. 91, 92 ..... iii. 165
c. 95 ..... ii. 37
c. 96 ..... iii. 458
c. 98 .....ii. 192, 247, 672, 749
c. 102..... ii. 367
c. 103..... iii. 58
c. 104..... ii. 731
c. 108.. i. 116; ii. 668, 748
c. 109.... i. 122; iii. 48—50
c. 111..... i. 516, 655
c. 112..... i. 105
11 & 12 Vict.
c. 5 ..... i. 105
c. 10 ..... iii. 329
c. 12 ..iv. 163, 166, 167, 371
c. 20 ..... ii. 409
c. 22 ..... i. 106
c. 29 ..... ii. 21
c. 31 ..... iii. 48, 58
c. 37 ..... ii. 747
c. 42 ..ii. 644—648; iv. 291, 312, 345—347, 354—356, 358, 359, 382, 428, 429
c. 43 .. i. 295; ii. 644, 645, 648, 649; iii. 396, 479; iv. 291, 335—338
c. 44 .. ii. 650; iii. 480, 632
c. 46 ..... iv. 43, 44, 371
c. 56 ..... i. 105
c. 58 ..... i. 598
c. 63 .... iii. 132, 172, 173, 480; iv. 277
c. 68 ..... ii. 379
c. 70 ..... i. 562
c. 78 ..iv. 299, 318, 442, 465
c. 82 ..... iii. 48, 107
c. 83 ..... iii. 299
c. 87 ..... i. 433
c. 88 ..ii. 571; iv. 136, 141, 371
c. 89 ..... iv. 282
c. 91 .... iii. 48, 62, 63, 67
c. 92 ..... iii. 166
c. 93 ..... iii. 41
c. 98 ..... iii. 445
c. 99 .... i. 516, 655—657
c. 101 ..... iii. 123
11 & 12 Vict.
c. 104..... iii. 125
c. 107..... iii. 413
c. 108..... ii. 485; iv. 182
c. 110.... ii. 291; iii. 48, 50, 51, 56, 58, 62, 68
c. 111..... iii. 48, 60
c. 121..... ii. 567
c. 123..... iii. 174
c. 129..... ii. 383
12 & 13 Vict.
c. 1 .....ii. 567, 568
c. 8 ..... iii. 44
c. 13 ..... iii. 50
c. 14 ..... iii. 63, 133
c. 18 ..... ii. 649
cc. 21, 22 ..... i. 105
c. 26 ..... i. 549
c. 28 .....i. 663; ii. 597
c. 29 ..... iii. 145
c. 42 ..... ii. 624
c. 45 .. iii. 59, 259; iv. 319, 339
c. 46 ..... iii. 138
c. 48 ..... i. 106
c. 49 ..... i. 474; iii. 103
c. 50 .... iii. 178, 296, 297
c. 52 ..... i. 105
c. 65 ..... ii. 656
c. 66 ..... i. 108
c. 67 ..... ii. 663
c. 68 ..... ii. 249, 260
c. 71 ..... iii 81
c. 72 ..... ii. 347
c. 74 ..... iii. 458
c. 78 .....i. 615; ii. 382
c. 79 ..... i. 105
c. 81 ..... i. 668
c. 83 .. i. 123, 516, 655, 656
c. 87 ..... iii. 141
c. 90 ..... ii. 563
c. 92 .. iv. 283; iii. 182, 255
c. 96 i. 108; iv. 74, 313, 364
c. 101.. ii. 303, 632; iii. 270, 285, 317
c. 102..... i. 622
c. 103.. iii. 43, 48, 50, 51, 57, 68; iv. 371
c. 105..... ii. 161
c. 106.....ii. 47, 57, 147
c. 109.. ii. 33, 34; iii. 322, 329, 594, 659, 664
c. 110..... i. 549
c. 111..... iii. 174
13 & 14 Vict.
c. 6 ..... iii. 51
c. 7 ..... iii. 180
c. 11 ..... iii. 107

13 & 14 Vict.
c. 15 .....i. 106; ii. 461
c. 17 ..... i. 549
c. 20 .....ii. 654, 655
c. 21 .. i. 70, 79, 283, 615, 618
c. 23 ..... i. 663; ii. 73
c. 24 ..... ii. 597; iv. 214
c. 25 .....iii. 353; iv. 314
c. 26 ..... ii. 18; iii. 345
c. 27 ..... ii. 18
c. 30 .....ii. 624
c. 35 .. i. 478; ii. 204, 313; iii. 329, 458
c. 37 ..ii. 649; iv. 332, 333, 438, 459
c. 39 ..... iii. 125—127
c. 41 ..... i. 116; ii. 748
c. 42 ..... iii. 41
c. 43 ..... i. 131; iii. 349
c. 54 ..... iii. 178
c. 56 ..... ii. 95
c. 57 ....i. 120, 122; ii. 699
c. 59 ..... i. 105, 106
c. 60 ..i. 306, 376, 377, 380, 442, 478; iii. 74, 458
c. 61 .. ii. 303, 632; iii. 285, 286, 287, 290, 636
c. 64 ..... iii. 129
c. 70 ..... i. 105
c. 79 ..... iii. 140, 141
c. 83 ..... iii. 182
c. 86 .....ii. 201
c. 88 ..... iii. 166
c. 90 .....ii. 305
c. 94 .....ii. 692, 748
c. 96 .....ii. 567
c. 97 .....ii. 571
c. 98 ..i. 684, 689, 670, 691, 692
c. 101 iii. 48, 68, 107; iv. 97, 436
c. 104..... ii. 41
c. 105.. i. 127, 662; ii. 631
14 & 15 Vict.
c. 4 ..... iii. 330, 331
c. 8 ..... ii. 41
c. 9 .....ii. 574
c. 11 .....ii. 230; iii. 51
c. 12 .....ii. 573
c. 13 ..... iii. 178
c. 16 ..... iii. 133
c. 19 ..iii. 184; iv. 102, 111, 350, 371
c. 24 ..... i. 474; iii. 103
c. 25 i. 260, 289, 678; ii. 215, 216, 219; iii. 250, 584
14 & 15 Vict.
c. 26 ..... iii. 165, 166
cc. 28, 34 ..... iii. 178
c. 36 .....ii. 568
c. 38 .... iii. 138, 140, 141
c. 41 ..... iii. 341
c. 42 .....ii. 525
c. 43 ..... i. 668
c. 46 .....ii. 536
c. 49 .....i. 108; ii. 383
c. 53 ..... i. 516, 655
c. 55 ..... i. 123; iii. 122; iv. 317, 320, 347, 352, 353, 435, 436
c. 56 ..... iii. 74
c. 60 .....iv. 186
c. 63 ..... i. 105
c. 64 ..... i. 462; iii. 182
c. 67 .....iv. 276
c. 76 ..... i. 668
c. 77 .....ii. 536
c. 79 ..... iii. 187
c. 81 .....ii. 511
c. 82 .. i. 619, 620; iii. 321
c. 83 ..ii. 461, 615; iii. 329, 331, 602
cc. 84, 86 ..... i. 105
c. 87 .... i. 88; ii. 331, 347
c. 88 ..... iii. 215
c. 94 ..... iii. 348
c. 97 i. 123; ii. 249, 747, 754
c. 99 .. i. 82, 600; ii. 262; iii. 536, 540, 542; iv. 224
c. 100.. i. 123; ii. 505; iii. 534, 540; iv. 7, 79, 112, 127, 281, 363, 366, 368, 369, 371, 372, 400, 401, 403, 419
c. 104 ii. 734, 738, 739, 748
c. 105.... iii. 48, 50, 58, 68
15 & 16 Vict.
c. 5 ..... iii. 35
c. 6 ..... ii. 41
c. 9 .....ii. 334
c. 10 .....ii. 574
c. 12 ..... ii. 41
c. 23 .....ii. 322
c. 24 ..... i. 599
c. 25 ..... iii. 235
c. 29 .....ii. 526
c. 31 ..... iii. 90
c. 33 ..... iii. 141
c. 35 .... i. 88; ii. 331, 347
c. 38 ..... iii. 44
c. 39 ..... i. 108
c. 44 ..... iii. 187
c. 47 .....ii. 563; iii. 146

15 & 16 Vict.
c. 48 ..... ii. 511
c. 49 ..... i. 474; iii. 103
c. 50 ..... ii. 587
c. 51 ..i. 642, 644, 645, 646
c. 52 .....i. 102; ii. 671
c. 53 ..... i. 102, 106, 643
c. 54 ..... iii. 277, 284, 285, 294
c. 55 .. i. 376, 377; iii. 458
c. 56 ..... iii. 207, 208
c. 57 ..... i. 380
c. 61 ..... ii. 568; iv. 330
c. 62 ..... i. 663; ii. 535
c. 72 ..... i. 105
c. 73 ..... iii. 352
c. 75 ..... i. 308
c. 76 ..i. 131, 295, 304; ii. 100, 110, 111, 112, 204; iii. 294, 352, 362, 364, 369, 377, 382, 396, 426, 439, 481, 490—492, 494—496, 498, 500—502, 505—510, 515—521, 528, 540, 543, 563, 565—567, 570, 571, 575, 578—580, 591—594, 607, 620—627, 614; iv. 419
c. 79 ..... i. 516, 655, 657
c. 80 ..... iii. 330, 331
c. 81 .....i. 129; iii. 51
c. 83 .... i. 620; ii. 28—34; iii. 594
cc. 84, 85 ..... iii. 179
c. 86 .. i. 105; iii. 329, 457, 596, 598, 601
c. 87 ..... iii. 321, 330
c. 88 ..... i. 102

16 & 17 Vict.
c. 5 ..... ii. 28—30
cc. 16, 17 ..... ii. 110
c. 19 ..... i. 668
c. 21 ..... i. 105
c. 22 ..... iii. 329, 600
c. 29 ..... i. 519
c. 30 ..iii. 643; iv. 294, 295, 307, 308, 386
c. 32 ..... iv. 464, 465
c. 33 ..... iii. 180
c. 34 ..... ii. 573
c. 35 ..... ii. 748
c. 36 ..... i. 668
c. 37 ..... ii. 568
c. 41 ..... iii. 178
c. 42 ..... i. 668
c. 45 ..... iii. 81, 84

16 & 17 Vict.
c. 48 ..... iv. 189
c. 49 ..... i. 102
c. 50 ..... ii. 748
c. 51 .... ii. 205, 572; iii. 292
c. 56 ..... ii. 525
c. 57 ..... i. 642
c. 65 ..... i. 121
c. 68 ..... ii. 359, 372
c. 69 ..... ii. 595
c. 70 ..i. 478; ii. 305, 510—513; iii. 120, 458
c. 73 ..... ii. 598
c. 74 ..... ii. 559
c. 78 ..... iii. 329
c. 79 ..... iii. 35, 41
c. 83 ....ii. 262; iii. 534; iv. 429
c. 84 ..... iii. 187
c. 86 ..... i. 110
c. 90 ..... ii. 559, 568
c. 91 ..... ii. 572
c. 95 ..... i. 112, 114
c. 96 .... iii. 112, 117—120
c. 97 ..... iii. 112—117
c. 98 ..... iii. 330
c. 99 ..iii. 126, 127; iv. 135, 136, 138, 146, 166, 167, 197—199, 221, 224, 286, 287, 444, 450, 451, 453, 476
c. 100..... iii. 171
c. 104..... iii. 178
c. 106..... ii. 563, 738
c. 107..i. 99, 107, 114; ii. 475, 500, 502, 503, 563, 565; iii. 145, 147, 166, 292; iv. 365
c. 115..... ii. 28, 29
c. 117..... ii. 559
c. 119..... iv. 273
c. 122..... ii. 249
c. 127..... ii. 568; iii. 180
c. 128..... iii. 179
c. 129..... ii. 462; iii. 156
c. 134..... iii. 179, 233
c. 137.... i. 461; iii. 73—77, 292; iv. 290

17 & 18 Vict.
c. 1 ..... ii. 668
c. 5 ..... iii. 145
c. 13 ..... ii. 587
c. 16 ..... iii. 285
c. 18 ..... ii. 494
c. 19 ..... iii. 345
c. 20 ..... ii. 646
c. 23 ..... ii. 574
c. 25 ..... iii. 90

17 & 18 Vict.
cc. 27, 30 ..... ii. 568
c. 31 .. ii. 88; iii. 182, 184
c. 32 ..... i. 679; ii. 747
c. 33 ..... ii. 526
c. 34 ..... iii. 531
c. 35 ..... i. 134; iii. 352
c. 36 ..... ii. 52; iii. 150
c. 37 ..... iv. 273, 274
c. 44 ..... ii. 501
c. 47 ..... iii. 315
c. 49 ..... i. 668
c. 51 ..... iii. 141
c. 56 ..... iii. 86
c. 58 ..... iii. 141
c. 60 ..... iv. 283
c. 61 ..... ii. 598
c. 71 ..... i. 129
c. 74 ..... i. 477, 584
c. 77 ..... i. 114
c. 78 ..... iii. 344
c. 81 ..... iii. 6
c. 82 ..... i. 131; iii. 356
c. 83 ..ii. 116, 127; iii. 225, 227
c. 84 ... i. 460; ii. 524, 736
c. 85 .... ii. 559, 568, 573
c. 86 ..... iii. 108
c. 87 ..... iii. 178
c. 88 ..... ii. 249, 260
c. 90 ..... ii. 96
c. 94 ..... ii. 579, 644
c. 96 ..... ii. 524
c. 97 .... i. 516, 655—657
c. 100 ..... iii. 330
c. 102....ii. 356, 373, 375—377
c. 104.. i. 114, 126, 474, 598; ii. 50, 89, 230, 377, 462, 502, 545, 546, 595; iii. 81, 147—153, 155—165, 187, 188, 190, 292, 342, 345; iv. 97, 139, 197, 364, 435
c. 105..... ii. 587; iii. 86
c. 108..... iii. 292
c. 112..... i. 461; ii. 736, iii. 104, 105, 292
c. 113..... i. 305; ii. 202
c. 114..... iii. 204
c. 117..... i. 106
c. 118..... i. 105
c. 119..... i. 147
c. 120.. ii. 50, 499; iii. 145, 147, 160, 187
c. 122..... ii. 563
c. 123....i. 130, 499; ii. 13, 82, 204, 711; iv. 426

17 & 18 Vict.
c. 125.... iii. 164, 260, 261, 294, 315, 349, 369, 424, 491, 504, 516, 521, 530, 535, 537—539, 541—543, 545, 555, 558, 575, 579, 583, 588, 592, 607, 630, 632, 634

18 & 19 Vict.
c. 1 ..... ii. 587
c. 2 ..... ii. 589
c. 3 ..... iii. 167
c. 5 ..... iii. 573
c. 13 i. 478; ii. 512; iii. 458
c. 15 ..i. 131, 252, 675; ii. 95 .. iii. 573, 666
c. 20 ..... ii. 475
c. 22 ..... ii. 568
c. 27 ..... iii. 193
c. 30 ..... iii. 296
c. 31 ..... iii. 41
c. 32 ..... iii. 292, 299
c. 34 ..... iii. 108
c. 35 ..... ii. 573
c. 36 ..... ii. 571
c. 38 ..... ii. 668; iii. 195
c. 41 ..... iii. 310, 378
c. 43 .....i. 478; ii. 306
c. 45 ..... i. 131
c. 46 ..... i. 668
c. 48 .. ii. 499, 500; iii. 347
c. 54 ..... i. 105
cc. 55, 56 ..... i. 105, 106
c. 57 ..... ii. 587
c. 58 ..... i. 132
c. 60 ..... ii. 524
c. 63 ii. 173; iii. 86—88, 292
c. 66 ..... ii. 249
c. 67 .. i. 131; ii. 118, 124; iii. 292
c. 72 ..... ii. 519
c. 79 ..... iii. 68, 178
c. 81 .... ii. 249, 707, 709; iii. 78
c. 84 ..... ii. 347
c. 85 ..... i. 110
c. 86 .... ii. 710; iii. 78, 79
c. 90 ..... iii. 670
c. 91 ....i. 108; ii. 50, 544; iii. 81, 147, 149, 150, 159, 160, 458; iv. 313, 365
c. 93 ..... i. 106
c. 94 ..... ii. 568
c. 95 ..... ii. 536
c. 96 ..i. 99; ii. 563; iii. 145
c. 97 ..... i. 99; ii. 563
c. 101..... iii. 167
c. 102..... iii. 141

18 & 19 Vict.
c. 104..... iii. 187
c. 105..... iii. 68, 113, 178
c. 108 .. i. 584; ii. 228; iii. 584, 614
c. 111..... ii. 49, 72
c. 116 .....iii. 174; iv. 277
c. 117..... ii. 459
c. 118.....iv. 214
c. 119.. i. 108; iii. 68, 187—189
c. 120.. i. 122, 249, 471, 583, 478; iii. 174, 175, 178, 179, 296, 297; iv. 335
c. 121.... iii. 174, 175, 178, 179, 292, iv. 277
c. 122..... iii. 179, 292
c. 124..i. 461; iii. 74, 76, 77
c. 126.... ii. 644—646, 649; iv. 320, 333, 335—338, 357, 436, 459
c. 127..... ii. 695
c. 128..... iii. 178
c. 131.....ii. 462; iii. 106
c. 132..... iii. 178
c. 134..... iii. 330
19 & 20 Vict.
c. 1 ..... ii. 347
c. 2 .. ii. 644, 647; iv. 335
c. 12 ..... iii. 141
c. 13 ..... i. 668
c. 15 .....ii. 593, 597
c. 16 .. i. 128; iv. 291, 303, 316, 352, 359, 366, 382, 387—390, 398, 432, 435—437
c. 17 .....iv. 326
c. 20 ..... iii. 225
c. 23 ..... i. 105
c. 25 ..... ii. 117
c. 27 ..... ii. 571
c. 31 .....iii. 6
c. 34 ..... ii. 568
c. 35 ..... i. 106
c. 38 ..... iii. 178
c. 40 ..... iii. 90
c. 41 ..... iii. 81
c. 46 .....ii. 228
c. 47 .....ii. 221
c. 50 .. i. 123; ii. 713, 714
c. 51 ..... ii. 568
c. 54 .....iv. 362
c. 55 .....i. 122; ii. 748
c. 59 ..... ii. 578
c. 60 .....i. 87
c. 64 .....i. 69; iv. 288
c. 69 .....i. 656—658
c. 70 ..... ii. 249
19 & 20 Vict.
c. 75 .....ii. 563
c. 80 .....ii. 559, 568, 573
c. 82 ..... ii. 568
c. 83 .....ii. 563, 598
c. 87 ..... iii. 112, 113
c. 88 ..... ii. 736; iii. 6, 7
c. 91 ..... ii. 70
c. 94 ..... ii. 212
c. 96 .....ii. 258, 656
c. 97 .. i. 87; ii. 51, 56, 105—107, 115, 117; iii. 431, 434, 475—477, 479
c. 104.. i. 122, 460; ii. 691, 697, 700, 748, 750, 751, 754
c. 105..... ii. 574
c. 107..... iii. 179
c. 108.. i. 295; ii. 303, 579, 682; iii. 250, 257, 285—288, 290, 396, 421, 422, 591, 631, 636, 637, 643, 652
c. 109..... iii. 108
c. 112..... iii. 179
c. 113 ..... iii. 533
c. 115..... i. 102
c. 116..... ii. 462
c. 118..... ii. 649; iv. 333
c. 119.... ii. 246, 251—257, 259, 313, 707
c. 120..i. 252, 253, 263, 266, 279, 288, 478, 479, 548, 616; ii. 265, 306, 315, 735; iii. 458
20 Vict.
c. 1 ..... ii. 598
c. 2 ..... ii. 656
c. 16 ..... ii. 568
c. 19 ..i. 119; ii. 246; iii. 44, 48, 62
20 & 21 Vict.
c. 1 ..... ii. 500; iii. 347
c. 2 ..... ii. 450
c. 3 .. i. 148; iii. 126, 127; iv. 135, 136, 138, 146, 166, 167, 197—199, 220, 221, 286, 287, 318, 443, 444, 450, 451, 453, 476
c. 9 ..... iii. 141
c. 10 ..... iii. 41
c. 13 ..i. 478; ii. 736; iii. 68
c. 22 ..... iii. 172
c. 29 ..... ii. 249
c. 31 .. i. 655, 656; iii. 103

20 & 21 Vict.
c. 32 ..... ii. 501
c. 33 ..... ii. 331
c. 34 ..... i. 105
c. 35 ..... iii. 179
c. 36 ..... iii. 285
c. 39 ..... iii. 215
c. 43 .. ii. 649; iv. 292, 299, 391
c. 46 ..... ii. 559
c. 50 ..... iii. 132
cc. 51—53 ..... i. 105
c. 54 .... iv. 114, 132, 133
c. 55 ..... iii. 108
c. 57 ..... ii. 267
c. 62 ..... ii. 563
c. 70 ..... ii. 41
c. 75 ..... i. 103
c. 77 .. i. 252; ii. 185, 190—193, 197, 615; iii. 305
c. 81 .... iii. 178, 179, 232
cc. 82, 83 ..... iv. 281
c. 85 ....ii. 239, 267, 277—282; iii. 275, 305, 438; iv. 278

21 & 22 Vict.
c. 1 ..... iii. 227, 228
c. 11 ..... iii. 7
c. 25 .. ii. 258, 640; iii. 171, 234, 237, 238
c. 26 ..... ii. 369
c. 27 .. i. 131; iii. 330, 601
c. 33 ..... i. 129
c. 35 ..... i. 105
c. 37 ..... i. 668
c. 38 ..... ii. 579
c. 44 ..... ii. 736; iii. 7
c. 45 ..... i. 131
c. 46 ..... ii. 260
c. 47 .....iv. 147
c. 48 ..... ii. 401
c. 49 ..... ii. 710, 716
c. 56 ..... ii. 185
c. 57 .... ii. 734, 738, 739
c. 58 ..... ii. 550
c. 67 ..... ii. 619; iv. 332
c. 68 ..... i. 127
c. 70 ..... iii. 292
c. 71 .....ii. 671; iii. 75
c. 73 .. ii. 646; iv. 317, 337
c. 74 ..... iii. 285, 631
c. 75 ..... iii. 186
c. 77 .. i. 633, 479; ii. 306
c. 78 ..... i. 614
c. 79 ..... ii. 117
c. 80 ..... iii. 141
c. 87 ..... ii. 375, 377
c. 90 .. ii. 697; iii. 43, 204, 207, 208, 209, 213

21 & 22 Vict.
c. 92 ..... iii. 17; iv. 320
c. 93 ..ii. 239, 281, 283; iii. 464
c. 94 ..i. 224, 630, 642, 645, 646
c. 95 ....i. 99, 101; ii. 183, 191, 197, 198; iii. 275, 292, 305
c. 96 ..... i. 106
c. 98 ..iii. 132, 172, 173, 178; iv. 277
c. 101..... iii. 86, 87, 88
c. 104 ..... iii. 179, 296
c. 106....i. 113, 114; ii. 459; iii. 147
c. 108 ii. 239, 267; iii. 305
c. 109.....ii. 454, 550
c. 110.....ii. 372, 381

22 Vict.
c. 1 ..... iii. 178
c. 2 ..... i. 87; ii. 704
c. 8 ..... iii. 285
c. 9 ..... ii. 535
c. 10 ..... iii. 536
c. 11 ..... i. 115
cc. 12, 13 ..... ii. 30
c. 16 ..... iii. 580
c. 19 .....ii. 536, 736
c. 21 ..... iii. 208—210
c. 24 .....ii. 249
c. 25 .....i. 148; iv. 450
c. 26 .....ii. 620
c. 27 .. i. 461, 474; iii. 17, 103
c. 28 .....ii. 598
c. 30 .....ii. 185
c. 32 ii. 144; iii. 436; iv. 471
c. 33 ..... ii. 640; iv. 357
c. 34 .....ii. 736
c. 35 ..... iii. 35

22 & 23 Vict.
c. 1 .....ii. 461
c. 4 ..... iv. 320, 321
c. 6 ..... iii. 275, 344
c. 9 ..... i. 105, 115
c. 10 ..... i. 105
cc. 12, 13 ..... i. 106
c. 16 ..... i. 474
c. 17 .. iv. 93, 146, 273, 363
c. 18 .....ii. 573
c. 19 ..... iii. 7
c. 20 ..... iii. 81
c. 21 ii. 144; iii. 339, 661, 665, 670
c. 25 .....ii. 367
c. 26 ..... i. 105
c. 29 ..... iii. 166
c. 30 ..... ii. 522; iv. 192
c. 32 .....ii. 629, 656, 657

22 & 23 Vict.
c. 33 ..... iii. 141
c. 34 ..... iii. 7
c. 35 ..i. 304, 426, 434, 437, 543, 549, 675; ii. 204; iii. 457—460; iv. 147
c. 36 .....ii. 191, 565
c. 37 .....ii. 563
c. 38 ..... ii. 587; iii. 470
c. 39 ..... i. 115
c. 40 ....ii. 589, 595; iii. 86
c. 41 ..... i. 115
c. 43 ..... i. 516, 655
c. 46 .....ii. 734, 738
c. 49 ..... iii. 48, 107
c. 50 ..... iii. 76
c. 53 ..... iii. 82
c. 56 .....ii. 519
c. 57 ..... iii. 182
c. 58 .....ii. 536
c. 59 ..... iii. 260
c. 61 ii. 281, 282, 314, 615; iii. 305, 464
c. 62 ..... iii. 533
c. 63 ..... i. 108
c. 64 .....ii. 260
c. 65 ..... i. 127, ii. 649
c. 66 .. i. 519; iii. 178, 205, 208

23 & 24 Vict.
c. 1 .....ii. 249
c. 5 ..... i. 115
c. 7 ..... iii. 208, 210
c. 11 ..... iii. 99
c. 13 ..... iii. 86
c. 14 .....ii. 573
c. 15 .....ii. 191
c. 16 ..... iii. 174
c. 18 .....ii. 250, 255
c. 22 .....ii. 563
c. 23 ..... iii. 7
c. 24 .....ii. 247
c. 27 .. ii. 568; iii. 195, 200, 201; iv. 214
c. 28 .....ii. 576
c. 30 ..... i. 123
c. 32 ..... iii. 310, 317
c. 34 .. ii. 475; iii. 657, 658
c. 36 .....ii. 563
c. 38 ..i. 131, 252, 303, 369; ii. 203—205; iii. 457, 458, 460, 573; iv. 147
c. 41 ..... iii. 186
c. 51 ..... i. 120; iii. 68
c. 52 ..... iii. 179
c. 53 ..... ii. 451; iii. 469

23 & 24 Vict.
c. 54 ..... iii. 332
c. 56 .....i. 99
c. 57 ..... i. 106
c. 58 ..... iii. 86, 88
c. 59 .. i. 642; ii. 524, 736, 750; iii. 7
c. 60 .... iii. 112, 125, 179
c. 63 .....ii. 710
c. 64 ..... iii. 178
c. 65 .....ii. 570
c. 66 ..... iii. 208, 213
c. 68 ..... iii. 183
c. 69 ..... i. 116
c. 70 ..... iii. 141
c. 73 ..... iii. 141
c. 75 ..... iii. 117
c. 77 ..... iii. 174, 175
c. 86 .....ii. 260
c. 88 .. i. 108, 115; iv. 364
c. 89 ..... i. 115; ii. 620
c. 90 .....ii. 20, 21, 568
c. 91 ..... iii. 7
c. 92 ..... iii. 165
c. 93 .....ii. 730, 731, 732
c. 94 .....ii. 587
cc. 100, 102 ..... i. 115
c. 106..... i. 165; iii. 9
c. 109.....ii. 498
c. 110.....ii. 563
c. 111.....ii. 126
c. 112.....ii. 498
cc. 113, 114 ..... ii. 568
c. 115 ..... iii. 589, 666
c. 116..... ii. 635—637
c. 120.....ii. 587
c. 121..... i. 105
c. 122..... i. 108; iv. 364
c. 124..ii. 738, 739, 748, 750
c. 125..... iii. 179
c. 126 i. 131, 304; iii. 164, 257, 280, 294, 334, 419, 421, 491, 493, 505, 575, 579, 588, 590, 605, 610, 613, 615, 625
c. 127.. i. 502; iii. 215—219
c. 129.....ii. 568
c. 130..... i. 115
c. 134.. i. 461; ii. 596, 710; iii. 76, 78; iv. 335
c. 135.....ii. 644
c. 136 .... iii. 74—76, 292
c. 137..... iii. 82, 86
c. 139.....iv. 276
c. 142.....ii. 692
c. 144 .....ii. 239; iii. 305
c. 145 i. 308; ii. 205; iii. 459
c. 146..... ii. 519; iii. 178

23 & 24 Vict.
c. 149..... iii. 329, 330
c. 154..... i. 678
24 & 25 Vict.
c. 3 ..... iii. 223
c. 9 ..... i. 462
c. 10 .. ii. 544; iii. 164, 344, 345
c. 11 ..... i. 108
c. 12 ..... iii. 112
c. 14 ..... iii. 85, 86
c. 15 ..... ii. 450
c. 16 .....ii. 249; iii. 51
c. 20 ..... ii. 42
c. 25 ..... i. 115
c. 31 ..... i. 106
c. 32 ..... iii. 74
c. 33 ..... ii. 536
c. 40 ..... i. 668; ii. 549
c. 43 ..... iii. 107
c. 44 ..... i. 105, 106
c. 45 ..... ii. 501, 462
c. 46 ..... iii. 141; iv. 128
c. 47 ..... ii. 502
c. 51 ..... ii. 644; iv. 335
c. 52 .. i. 105, 106; iii. 189
c. 53 .... ii. 359, 372, 373
c. 54 ..... i. 115
c. 55 ..iii. 48, 51, 60, 61, 68
c. 59 ..... iii. 171
c. 61 .... iii. 132, 173, 178; iv. 277
c. 62 ..... ii. 483; iii. 469
c. 65 ..... iii. 259
c. 66 .. ii. 711; iii. 536; iv. 426
c. 67 ..... i. 115
c. 70 ..... iii. 135, 180
c. 72 ..... iii. 165
c. 74 ..... i. 115; ii. 589
c. 75 ..... ii. 519; iii. 35
c. 76 .....iii. 49, 58, 60
cc. 78, 79 .....ii. 519
c. 80 .....ii. 502, 579
c. 87 ..... iii. 179
c. 89 ..... i. 115
c. 91 ..ii. 559, 560, 567, 568, 573; iii. 195, 196, 200, 213
c. 92 ..... ii. 191; iii. 340
c. 94 .... iv. 40, 41, 43, 44, 60, 78, 93, 96, 102, 103, 105, 107, 109, 110, 313, 364
c. 95 .... i. 614; ii. 7, 545, 546; iii. 19; iv. 43, 50, 75, 114, 122, 124, 127—130, 132, 133, 140, 142, 147, 193, 282, 283, 318, 331, 347, 364, 437, 443
c. 96 ..ii. 4, 7, 20, 21, 74, 545, 649; iii. 19, 166, 460; iv. 39, 43, 105, 107, 109—112, 114, 120—122, 124, 125, 127—138, 147, 188, 223, 297, 312, 318, 319, 331, 332, 347, 350, 365, 367, 371, 417, 432, 436, 437, 447—449, 471
c. 97 .... ii. 545, 546, 649; iii. 182, 184, 185; iv. 37, 43, 102, 104, 139—141, 297, 312, 313, 319, 331, 332, 350, 365, 417, 436, 447—449, 471
c. 98 ..i. 614; ii. 389; iii. 233; iv. 39, 43, 143—146, 151, 223, 224, 297, 312, 313, 365, 371, 372, 436, 447—449
c. 99 .. ii. 522, 649; iv. 36, 43, 189—194, 297, 312, 313, 350, 365, 371, 432, 436, 447—449
c. 100.. i. 134, 139; ii. 231, 232, 294, 649; iii. 181, 182, 184; iv. 36, 43, 44, 59, 63, 66, 67, 74, 75, 77, 78, 80—85, 88, 91—98, 279, 282, 283, 284, 285, 297, 312, 313, 331, 332, 363, 364, 365, 370, 436, 443, 447—449
c. 101..... i. 69; iii. 70
c. 102..... iii. 132
c. 104..... i. 115
c. 105..... ii. 738, 739
c. 108..... ii. 598
c. 109..... iii. 165
c. 112..... i. 129
c. 113..... iii. 110
c. 114..... ii. 189
c. 117..... iii. 178
c. 118..... i. 115
c. 125..... i. 120
c. 126..... iii. 140

24 & 25 Vict.
c. 130..... iv. 276
c. 133.. iii. 178, 247, 259, 297, 298
c. 134..... ii. 57, 147
25 & 26 Vict.
c. 4 ..... i. 620
c. 7 ..... i. 115
c. 11 ..... i. 105
c. 12 ..... ii. 41
c. 14 ..i. 99; ii. 475; iii. 670
c. 17 ..... i. 462
c. 18 ..... iv. 332, 449
c. 19 ..... ii. 402
c. 20 ..... i. 108; iii. 644
c. 22 ..ii. 563, 568, 571, 573
c. 25 ..... iii. 173
c. 26 .....i. 67; iii. 7, 300
c. 27 ..... i. 115
c. 30 ..... ii. 502; 579
c. 37 ..... ii. 535
c. 40 ..... i. 110
c. 42 .. i. 131; iii. 330, 602
c. 43 ..... iii. 108
c. 44 ..... iii. 91; iv. 447
c. 45 ..... i. 106
c. 47 ..... i. 657
c. 48 ..... i. 106
c. 49 ..... ii. 451
c. 52 ..... ii. 739
c. 53 .. i. 694—698, 700; ii. 165, 483; iii. 596
c. 55 ..... i. 106
c. 57 ..... ii. 526
c. 61 .. i. 119, 461; iii. 132, 133, 136—138
c. 63 .. ii. 89, 141, 544, 545, 563; iii. 146, 147, 150—152, 155—162, 165, 187, 190
c. 65 .. ii. 590; iv. 291, 316, 387, 398, 435, 437
c. 66 .....iv. 276
c. 67 .... i. 694, 698—700
c. 68 ..... ii. 41
c. 69 .....ii. 462, 501
c. 74 ..... ii. 526
c. 78 .....ii. 501, 598
c. 81 ..... ii. 239
c. 82 ..... iii. 63
c. 86 .. i. 478; ii. 511—513
c. 87 ..... iii. 90, 91, 292
c. 88 .....iii. 429; iv. 145
c. 89 .. i. 461; ii. 129, 135, 221, 463; iii. 19—25, 91, 229, 292
c. 90 ..... i. 110
c. 91 ..... iii. 209
c. 94 ..... i. 657
25 & 26 Vict.
c. 96 ..... i. 584
c. 97 ..... iii. 165
c. 98 ..... iv. 277
c. 99 .....ii. 147, 367
c. 100..... iii. 178
c. 102..... iii. 296
c. 103..... iii. 66
c. 104..... iii. 112, 179
c. 107..... ii. 652; iii. 516
c. 108..... iii. 460
c. 110..... iii. 51
c. 111.... iii. 113, 114, 117, —119
c. 112..... iii. 74, 75
c. 113..... iii. 49, 58, 60
c. 114..... ii. 21, 187
26 & 27 Vict.
c. 1 .....ii. 450
c. 5 .....ii. 598
c. 10 ..... iii. 166
c. 12 .....ii. 459
c. 14 ..... iii. 85, 86
c. 17 ..... iii. 173
c. 20 .....ii. 373
c. 23 ..... i. 106
c. 29 .....ii. 375
c. 31 ..... i. 106
c. 33 .....ii. 567
c. 34 ..... i. 110
c. 35 ..... i. 105
c. 36 .....ii. 749
c. 40 ..... iii. 178
c. 41 .....ii. 57, 85
c. 44 ..... iv. 128, 449
c. 47 ..... iv. 199, 287
c. 48 ..... i. 115
c. 49 .....ii. 451
c. 50 ..... iii. 165
c. 51 ..... iii. 188
c. 56 ..... iii. 91
c. 57 .....ii. 593
c. 61 .... iii. 133, 136, 137
c. 65 .. i. 150; ii. 587, 588
c. 69 .....ii. 595
cc. 71, 72 .....ii. 501
c. 75 ..... i. 108
c. 78 ..... iii. 132
c. 79 ..... iii. 124
c. 81 .....ii. 502
c. 82 .....ii. 667
c. 84 ..... i. 102, 103, 108
c. 86 .....ii. 501
c. 87 ..... iii. 81—84
c. 89 ..... iii. 49, 58
c. 92 ..... iii. 9, 182
c. 93 ..... iii. 9
c. 95 ..... iii. 178
c. 96 .....ii. 646

26 & 27 Vict.
c. 98 ..... iii. 141
c. 103..... iv. 118, 130
c. 105..... ii. 127
c. 106..... i. 462
c. 110..... iii. 113
c. 111..... ii. 598
c. 112..... iii. 9
c. 114..... i. 253; iii. 156
c. 117..... iii. 174
c. 118..... iii. 9
c. 120..... ii. 739
c. 121..... ii. 671, 673
c. 122..... ii. 355; iii. 352
c. 124..... iii. 178
c. 125..... i. 69; ii. 530, 533, 542, 587; iii. 317

27 & 28 Vict.
c. 9 ..... ii. 568
c. 12 ..... ii. 565
c. 15 ..... iii. 329
c. 18 ..... ii. 563, 573
c. 19 ..... iii. 21
c. 21 ..... ii. 459
c. 28 ..... ii. 19
c. 29 ..... iii. 116
c. 32 ..... iii. 230
c. 34 ..... ii. 459
c. 39 ..... iii. 66, 67
c. 43 ..... iii. 81, 84
c. 44 ..... ii. 267
c. 45 .. i. 252, 479; ii. 306
c. 47 .. ii. 232, 546; iii. 233; iv. 44, 66, 78, 81, 83—85, 88, 91—97, 101, 111, 112, 127, 128, 130—132, 135—140, 144, 147, 148, 166, 167, 190—194, 197—199, 221, 223, 224, 287, 279, 451, 452
c. 48 ..... iii. 178
c. 55 ..... ii. 646; iv. 334
c. 56 ..... ii. 130, 191, 567
c. 57 ..... ii. 458
c. 62 ..... i. 99; ii. 501
c. 65 ..... iv. 329
c. 70 ..... ii. 671
c. 75 ..... iii. 139
c. 79 ..... iii. 141
c. 80 ..... ii. 500
c. 92 ..... iii. 97
c. 95 ..... iii. 370
c. 97 ..... iii. 233
c. 101 iii. 130, 133, 135—137
c. 102..... ii. 501
c. 108..... i. 106

27 & 28 Vict.
c. 109..... ii. 501
c. 112.. i. 251, 252, 311; ii. 203; iii. 573, 587
c. 113..... ii. 596
c. 114..... i. 643
c. 116..... iii. 179
c. 117..... ii. 520
c. 118..... iii. 165
cc. 120, 121 ..... iii. 9

28 & 29 Vict.
c. 5 ..... i. 105
c. 8 ..... ii. 379
c. 14 ..... i. 108
cc. 15, 17 ..... i. 115
c. 18 .. iii. 537, 539, 543; iv. 425, 426, 428
c. 22 ..... iii. 165
c. 27 ..... i. 615; ii. 383
c. 28 ..... i. 99
c. 30 ..... ii. 563
cc. 31, 32..... i. 115
c. 34 ..... iii. 179
c. 36 ..... ii. 354, 355
c. 37 ..... i. 127
c. 42 ..... ii. 724
c. 45 ..... ii. 571
c. 46 ..... ii. 587
c. 52 ..... iv. 436
c. 60 ..... iii. 376
c. 61 ..... ii. 501
c. 63 .. i. 101, 103, 106—108
c. 64 ..... i. 108; ii. 260
c. 66 ..... ii. 568
c. 68 ..... ii. 620
c. 69 ..... ii. 691
c. 72 ..... i. 598
c. 75 ..... iii. 178, 297
c. 78 ..... i. 695; iii. 186
c. 79 ..... iii. 49, 51, 58, 60
c. 80 ..... iii. 112
c. 81 ..... ii. 249
c. 83 ..... iii. 135, 180
c. 86 ..... ii. 103
c. 89 ..... ii. 597
c. 91..... iii. 141
c. 94 ..... ii. 88
c. 99 .. i. 304, 373, 376; ii. 99, 103, 104, 213; iii. 285, 290
c. 100..... ii. 501
c. 104.. ii. 573; iii. 340, 662, 664, 666, 668, 670
c. 106..... ii. 598
c. 111..... i. 598
c. 113.. i. 101, 103; ii. 620
c. 115..... ii. 596
c. 116..... i. 101, 103
c. 119..... iii. 167, 178

28 & 29 Vict.
c. 120 ..... ii. 501
c. 121 ..... iii. 165
c. 122 .. ii. 661, 686, 687, 694, 720
c. 126 .. ii. 629, 630; iii. 91, 109, 121—125; iv. 42, 358, 447, 448
c. 127 ..... iv. 330
29 & 30 Vict.
c. 1 ..... i. 141
cc. 7, 8 ..... ii. 450
c. 11 ..... ii. 579
c. 12 ..... i. 106
c. 14 ..... iii. 285
c. 18 ..... i. 115
c. 19 ..... ii. 338
c. 22 ..... ii. 622, 710
c. 23 ..... i. 99
c. 25 ..... ii. 574
c. 30 ..... ii. 502
c. 32 ..... ii. 278, 281
c. 35 ..... iii. 178
c. 36 ..... ii. 563
c. 39 .. ii. 529; iii. 85, 224
c. 41 ..... iii. 174
c. 43 ..... iii. 81
c. 45 ..... iii. 167
c. 48 ..... ii. 450
c. 54 ..... ii. 355
c. 57 ..... i. 462
c. 59 ..... ii. 559
c. 62 ..... ii. 536
c. 67 ..... i. 105, 106
c. 68 ..... ii. 620
c. 69 ..... ii. 86; iv. 276
c. 70 ..... i. 668
c. 74 ..... i. 105
c. 78 ..... i. 129
c. 81 ..... i. 99
c. 87 ..... i. 103
c. 90 ..... iii. 174, 178
c. 92 ..... iii. 141
c. 96 ..... ii. 52
c. 100 ..... iii. 123
c. 102 ..... iii. 165, 178
c. 104 ..... i. 106
c. 108 ..... iii. 182
c. 109 .. ii. 596; iv. 197, 207
c. 111 ..... ii. 748
c. 113 .. iii. 43, 49, 64, 234; iv. 287
c. 115 ..... i. 106
c. 117 .. ii. 291; iii. 108, 109; iv. 447
c. 118 .. ii. 291; iii. 110, 111
30 & 31 Vict. c. 3 .... i. 105, 106
c. 5 ..... ii. 567; iii. 132
c. 6 ..... iii. 49, 51, 179
30 & 31 Vict.
c. 12 ..... iii. 117
c. 16 ..... i. 105
c. 23 ..... ii. 130, 563, 573
c. 24 ..... ii. 501
c. 29 ..... ii. 76; iii. 230
c. 33 ..... ii. 502
c. 35 .. ii. 74, 355, 711; iii. 529, 643; iv. 93, 146, 278, 354, 355, 358, 359, 361, 363, 382, 421, 429, 436, 439
c. 39 ..... ii. 644
c. 45 ..... iv. 363
c. 47 ..... iii. 589, 667
c. 48 ..... ii. 77
c. 51 ..... ii. 550
c. 52 ..... iii. 165
c. 59 .. i. 69; ii. 93, 130, 393, 412; iv. 196, 383
c. 62 ..... ii. 622, 709
c. 64 ..... iii. 329, 331
c. 66 ..... iii. 141
c. 68 ..... iii. 341, 627
c. 69 ..... i. 305; ii. 202
c. 77 ..... ii. 239
c. 83 ..... ii. 563
c. 84 ..... iii. 171, 172
c. 86 ..... i. 99; ii. 130
c. 87 ..... iii. 329
c. 90 ..... ii. 569, 571
c. 91 ..... i. 106
c. 92 ..... ii. 587
c. 93 ..... ii. 260
c. 102 .. i. 132; ii. 334, 351—356, 358, 359, 361—363, 365, 368, 370, 372, 377, 378, 398
c. 103 ..... iii. 178
c. 105 ..... ii. 232
c. 106 .... ii. 228; iii. 49, 50, 51, 62
c. 107 ..... ii. 368
c. 108 ..... ii. 623
c. 110 ..... ii. 589, 593
c. 111 ..... ii. 587
c. 113 ..... iii. 178, 297
c. 117 ..... iii. 90, 91
c. 121 ..... iii. 131, 138
c. 124 .. iii. 147, 153; iv. 365
c. 127 ..... iii. 182, 186
c. 128 ..... iv. 195
c. 130 ..... ii. 228
c. 131 .. iii. 12, 20—25, 229, 292, iv. 145, 146
c. 132 ..... ii. 205; iii. 459
c. 133 .. ii. 698, 715; iii. 108

30 & 31 Vict.
c. 134.... iii. 132, 179, 180
c. 135.....ii. 660, 668, 676
c. 140..... ii. 536
c. 141.....ii. 229, 231
c. 142..ii. 628, 632; iii. 85, 196, 281, 282, 285—288, 291, 293, 295, 367, 515, 576
c. 143..... i. 643
c. 144..... ii. 46, 136
c. 145..... ii. 501
c. 146..... iii. 178
31 & 32 Vict.
c. 4 ..... i. 337
c. 5 ..... iii. 179, 180
c. 6 ..... ii. 334
c. 9 ..... ii. 578
c. 11 ..... iii. 329
c. 18 ..... iii. 182
c. 19 ..... ii. 749
c. 22 ..... iii. 122
c. 24 ....ii. 641; iv. 78, 479
c. 29 ..... iii. 208
c. 32 ..... iii. 100
c. 33 ..... ii. 462
c. 35 ..... ii. 451
c. 36 ..... iii. 178
c. 37 ..... ii. 507
c. 40 ..... i. 345
c. 41 ..i. 125; ii. 358; iii. 35
c. 42 ..... ii. 329
c. 44 ..... i. 461
c. 45 .. ii. 595; iii. 165, 166
c. 46 ..... ii. 358; iii. 34
c. 47 .....ii. 698, 715
c. 48 ..i. 86; ii. 351, 358, 359
c. 49 ....ii. 351
c. 51 ..... i. 663
c. 52 .....iv. 275
c. 58 .....ii. 334
c. 66 ..... iii. 141
c. 67 .....ii. 644
c. 71 ..ii. 164, 366, 544; iii. 285, 291
c. 72 ..ii. 338, 402, 459, 588, 622, 623, 645, 661, 686; iii. 138, 315
c. 78 ..... ii. 365
c. 76 ..... ii. 587
c. 77 ..... ii. 281
c. 78 ..... ii. 459; iii. 345
c. 79 ..... iii. 182
c. 80 ..... iii. 178
c. 83 ..... ii. 593
c. 86 ..... ii. 46
c. 89 ..... i. 643
c. 90 ..... ii. 593
31 & 32 Vict.
cc. 91, 92 ..... i. 106
c. 104..... ii. 147
c. 105..... i. 105
c. 106..... i. 663
c. 109.. ii. 698, 699; iii. 313
c. 110..... ii. 570; iii. 185
c. 111.... iii. 165, 166, 178
c. 114.....ii. 748, 750
c. 115..... iii. 178
c. 116.....iv. 117
c. 117.....ii. 683, 752
c. 118..... iii. 97—99
c. 119.. ii. 88; iii. 182, 186, 187
c. 120..... i. 106
c. 121..... iii. 207, 208
c. 122....ii. 291; iii. 49, 56, 107
c. 124..... ii. 567
c. 125..ii. 340, 366, 374, 378, 379; iii. 334, 341, 444
c. 129.. i. 108; iii. 149, 184
c. 130..... iii. 178
32 & 33 Vict.
c. 11 ..... iii. 147
c. 12 ..... ii. 598; iv. 195
c. 13 ..... ii. 587
c. 14 ..ii. 135, 560, 567, 568, 573; iii. 181, 182
c. 15 ..... ii. 368
c. 16 ..... i. 106
c. 17 ..... ii. 21
c. 18 ..... iii. 9
c. 19 ..... iii. 299
c. 20 ..... iv. 7
c. 23 ..... i. 161
c. 24 ..... iii. 192, 198
c. 27 ..iii. 195, 196, 200, 201
c. 31 ..... iii. 165
c. 34 ..... i. 646
c. 41 ..... iii. 65
c. 42 ..... i. 97
c. 43 ..... ii. 485
c. 44 ..... ii. 597
c. 45 ..... iii. 49
c. 46 .....i. 434; ii. 203
c. 47 .....i. 126; ii. 653
c. 48 ..... iii. 9
c. 51 ..... iii. 285, 291
c. 53 ..... ii. 499
c. 55 .....ii. 34, 35
c. 56 ..... iii. 100—102
c. 58 ..... iii. 97
c. 59 ..... iii. 82
c. 60 ..... ii. 620; iii. 497
c. 61 ..... ii. 381

32 & 33 Vict.
c. 62 ..ii. 148, 159, 161, 490, 559, 629, 649; iii. 218, 289, 436, 532, 571, 572, 589, 602; iv. 435
c. 63 ..... iii. 49, 179
c. 65 ..... ii. 203
c. 66 ..... ii. 587
c. 67 ..... ii. 644; iii. 66
c. 68 .. ii. 263; iii. 534, 535
c. 69 ..... i. 106
c. 70 ..... iii. 178
c. 71 .. i. 632; ii. 45, 46, 57, 147—158, 160—177, 367; iii. 87, 250, 292; iv. 318
c. 73 .....ii. 570, 571
c. 76 ..... ii. 502
c. 78 ..... iii. 117
c. 81 .....i. 150; ii. 588
c. 82 ..... iii. 179
c. 83 .. ii. 148, 162; iii. 571
c. 91 ..... iii. 330
c. 92 ..... iii. 167
c. 94 .....ii. 747, 751
c. 95 ..... iii. 126
c. 96 ..... iii. 178
cc. 97, 98 ..... i. 112, 115
c. 99 .....iv. 452
c. 101..... iii. 179
c. 102..... iii. 296
c. 103..... ii. 565
c. 106..... i. 115
c. 109..... ii. 689
c. 110..... iii. 74, 75
c. 111..... ii. 678
c. 113.....ii. 87; iv. 276
c. 115..... iii. 180
c. 117..... iii. 208

33 & 34 Vict.
c. 2 ..... iii. 49
c. 3 ..... i. 115
c. 4 ..... ii. 573
c. 6 ..... ii. 589; iii. 350
c. 10 .. i. 108; ii. 521—525
c. 12 ..... i. 99
c. 14 .. i. 269, 477, 478; ii. 339, 402, 405, 406, 409—411; iii. 148, 522, 524
c. 15 .....iii. 285
c. 17 ..... ii. 459
c. 18 ..... iii. 49
c. 19 ..... iii. 183
c. 20 ..... i. 695; iii. 186
c. 21 ..... ii. 334
c. 22 ..... iii. 141
c. 23 .. i. 54, 210, 213, 222, 380, 377, 454; iii. 660; iv. 10, 62, 164, 166, 185, 383, 439, 459, 461, 462
c. 27 ..... ii. 28
c. 28 ..... iii. 215, 219
c. 29 ..... iii. 195, 196
c. 30 .... iii. 285, 289, 589
c. 32 ..ii. 563, 568, 571, 573
c. 34 ..... i. 461
c. 35 ..... i. 261, 678, 679
c. 39 ..... ii. 748
c. 40 ..... i. 106
c. 43 ..... i. 99
c. 45 ..... iii. 344
c. 48 ..... iii. 49, 58
c. 49 ..... iii. 535
c. 51 ..... i. 99
c. 56 ..... i. 253
c. 57 ..... ii. 20, 567
c. 58 ..... iv. 143, 145
c. 59 ..... i. 115
c. 60 ..... ii. 78
c. 61 .....ii. 136, 463
c. 62 .. ii. 342, 610; iii. 178
c. 66 ..... i. 105
c. 67 .....ii. 589
c. 68 ..... ii. 587
c. 71 ..... ii. 576; iii. 223
c. 75 ..ii. 293; iii. 75, 93—97, 100, 103, 106, 107, 111
c. 76 ..... ii. 153; iii. 106
c. 77 .. iii. 212, 277, 516—518, 520, 524, 526—528, 549
c. 78 .. ii. 570, 571; iii. 180
c. 81 .....ii. 393
c. 83 ..... iii. 535
c. 84 ..... iii. 97
c. 86 .....ii. 622
c. 87 .....iv. 213
c. 88 .....ii. 570
c. 89 .....ii. 534
c. 90 ..... iv. 196, 365
c. 91 .....ii. 461, 464
c. 92 .....ii. 695
c. 93 ..i. 146; ii. 45, 62, 63, 136, 151, 185, 187, 266, 267—269, 271, 272, 290; iii. 56, 83, 84, 89
c. 94 .....i. 633; iii. 93
c. 95 ..... iii. 189
c. 97 ..i. 484, 634; ii. 52, 116, 127; iii. 217, 227, 270
c. 109.....ii. 597
c. 103..i. 106; ii. 375; iii. 165

33 & 34 Vict.
c. 104..... iii. 19, 20
c. 107..... i. 134
34 & 35 Vict.
c. 1 ..... ii. 450
c. 2 ..... iii. 516
c. 3 ..... ii. 383
c. 4 ..... ii. 571
c. 5 ..... ii. 573
cc. 6, 7 ..... i. 129
c. 8 ..... i. 105
c. 11 ..... iii. 49
c. 12 ..... i. 663
c. 14 ..... iii. 17
c. 15 ..... iii. 49
c. 16 ..... iii. 213
c. 17 ..... ii. 119, 123
c. 18 ..... iii. 215, 220
c. 19 ..... ii. 710; iii. 178
c. 21 ..... ii. 560, 573
c. 25 ..... i. 89
c. 28 ..... i. 105
c. 29 ..... iii. 233
c. 30 ..... ii. 570
c. 31 ..... ii. 136
c. 33 ..... iii. 178
c. 34 ..... i. 115
c. 35 ..... ii. 644
c. 36 ..... ii. 620
c. 37 ..... i. 89; ii. 704
cc. 39, 41 ..... iii. 179
c. 43 ..... ii. 713
c. 45 ..... ii. 622, 694
c. 48 ..... ii. 622, 625
c. 50 ..... ii. 151, 346
c. 56 ..... iii. 376
c. 58 ..... ii. 136
c. 60 ..... iii. 97
c. 62 ..... i. 112
c. 63 ..... iii. 9
c. 64 ..... ii. 450
c. 67 ..... iii. 34
c. 70 .. iii. 49—51, 62, 68, 74, 120, 176
c. 73 ..... i. 131
c. 74 ..... ii. 117
c. 77 ..... ii. 380
c. 78 ..... iii. 183
c. 79 ..... iii. 248
c. 80 ..... iii. 90, 91
c. 82 ..... ii. 747
c. 83 ..... ii. 383
c. 84 ..... i. 253
c. 85 ..... i. 668; ii. 549
c. 86 ..... ii. 586, 587, 589
c. 88 ..... iii. 196
c. 90 ..... ii. 692
c. 91 ..... ii. 463
c. 93 ..... i. 668
34 & 35 Vict.
c. 94 ..... iii. 93, 94
c. 96 ..... ii. 567
c. 98 ..... iii. 171
c. 103..... iii. 193
c. 104..... iii. 178
c. 105..... iv. 277
c. 107..... i. 105
c. 108..... iii. 49, 57
c. 110..iii. 147, 149, 153, 155
c. 112.. iii. 110, 539; iv. 97, 188, 287, 289, 290, 350, 428, 433, 451—453
c. 113..... iii. 179
c. 116..... i. 69
35 & 36 Vict.
c. 1 ..... ii. 579
c. 2 ..... iii. 49
c. 3 ..... i. 128
c. 8 ..... ii. 675
c. 9 ..... i. 106
c. 10 ..... ii. 125
c. 12 ..... ii. 620
c. 13 ..... i. 97
c. 14 ..... i. 116
c. 15 ..... ii. 536
c. 18 ..... ii. 462
c. 19 ..... i. 108
c. 20 ..... ii. 563
c. 23 ..... ii. 501
c. 26 .. ii. 708; iv. 299, 339
c. 27 ..... iii. 93
c. 29 ..... i. 102
c. 33 ....ii. 359, 366, 370—373, 377, 380; iii. 35
c. 34 ..... iii. 223
c. 35 ..... ii. 657, 704
c. 36 ..... ii. 740
c. 38 ..... iv. 95
c. 39 ..... ii. 405
c. 40 ..... ii. 673
c. 41 ..... ii. 136
c. 44 ..... iii. 330, 458
c. 45 ..... iii. 167
c. 46 ..... ii. 228
c. 49 ..... ii. 740
c. 50 ..... iii. 183, 251
c. 52 ..... iv. 307
c. 54 ..... iii. 93
c. 59 ..... iii. 93, 94
c. 60 .. ii. 376; iii. 35, 334
c. 63 ..... i. 69; ii. 367
c. 65 ..... ii. 298, 299
c. 66 ..... ii. 745
c. 72 ..... iii. 141
c. 73 ..ii. 595; iii. 147, 152, 157, 187, 188

35 & 36 Vict.
cc. 76, 77 ..... iii. 178
c. 78 ..... iv. 21
c. 79 ....iii. 173, 176—178; iv. 277
c. 81 ..... iii. 215
c. 82 ..... ii. 573
c. 83 ..... ii. 620
c. 84 ..... ii. 355
c. 86 .... iii. 294, 295, 591, 653
c. 87 ..... ii. 579
c. 88 ..i. 72, 87; ii. 127, 375, 587, 738, 749
c. 90 ..... i. 97
c. 92 ..... ii. 655, 656
c. 93 .... ii. 75, 81; iv. 347
c. 94 ..iii. 195—201; iv. 214, 282
c. 95 ..... i. 668
c. 96 ..... ii. 597, 713
cc. 97, 98 ..... i. 69

36 & 37 Vict.
c. 1 ..... ii. 249
c. 5 ..... i. 668
c. 6 ..... i. 106
c. 7 ..... iii. 100
c. 8 ..... ii. 573
c. 10 .. i. 128; ii. 589—591
c. 11 ..... ii. 598
c. 13 ..... iii. 165
c. 15 ..... i. 105
c. 17 ..... i. 110; iii. 147
c. 18 ..... ii. 563
c. 23 ..... ii. 620
c. 25 ..... ii. 249
c. 28 ..... ii. 249
c. 31 ..... ii. 282
c. 35 ..... i. 129
c. 37 ..... i. 693
c. 38 ..... iv. 275, 287
c. 41 ..... iii. 97
c. 45 ..... i. 105
c. 48 .... iii. 183, 184, 260
c. 49 ..... iii. 93
c. 52 .. ii. 193; iii. 285, 292
c. 55 ..... iii. 208
c. 59 ..... i. 103
c. 61 ..... ii. 586

36 & 37 Vict.
c. 62 ..... iii. 97
c. 66 ..i. 6, 46, 82, 128, 131, 257, 308, 319; ii. 13, 15, 32, 38, 46, 104, 147, 154, 163, 185, 213, 239, 281, 367, 461, 527; iii. 28, 72, 78, 215, 271—273, 279, 287, 288, 290, 291, 295, 299, 309, 319—321, 330, 341, 342, 346—349, 352—357, 363, 366, 369, 382, 393, 407, 419, 430, 438, 440, 454—458, 461—463, 472, 481, 486—488, 491—496, 498, 500—504, 509—512, 514, 520, 530, 533, 540, 541, 546, 547, 551, 554—558, 562—568, 574, 577, 580, 581, 593—595, 608, 613, 617, 624, 628, 630, 635, 640, 642, 663; iv. 307
c. 68 ..... ii. 587
c. 70 ..... ii. 335
c. 71 ..... iii. 165
c. 73 ..... iii. 176
c. 75 .. i. 87; ii. 127, 229, 375, 378, 381, 587, 672; iii. 65, 97, 135, 141, 165, 178, 180; iv. 213, 276
c. 76 ..... iii. 183
c. 77 ..... ii. 595
c. 80 ..... ii. 450
c. 84 ..... ii. 587
c. 85 ....iii. 147—149, 151, 152, 154
c. 86 iii. 93, 94, 96, 108, 111
c. 87 ..... iii. 100, 101
c. 88 ..... i. 110
c. 90 ..... iii. 138
c. 91 ..... i. 69

GENERAL INDEX.

A.

ABANDONMENT of children, iv. 94
of goods, ii. 133

Abatement of action, iii. 502
of nuisance, iii. 244, 405
of obstruction, iii. 413
ouster by, iii. 386
pleas in, iii. 502; iv. 400

Abator, iii. 386

Abbey lands, ii. 727; iv. 183

Abbots, ii. 329, n.

Abdication by James II., ii. 436; iv. 517

Abduction of children, ii. 294; iii. 440, n.; iv. 94
of females, iv. 94
of ward, iii. 449
of wife, iii. 437

Abearance, security for good, iv. 295

Abetment, iv. 331

Abettor, iv. 39

Abeyance, i. 226, n., 236, 328, n.
peerage in, ii. 608

Abigei, iv. 121

Ability of clerk, iii. 611, n.

Abjuration, oath of, ii. 338, 402
of the realm, i. 142; iv. 398, n.

Abolition of colonial slavery, i. 109
of fines and recoveries, i. 575
of military tenures, i. 204
of real actions, iii. 361, 396, 410, n.

Abortion, producing, iv. 83

Abridgments of the law, i. 51

Absconding debtor, ii. 153, n.; iii. 497
of defendant in chancery, iii. 596

Abstract of title, i. 485, n.

Abuse of chattels, iii. 428

Abuser of office, ii. 623

Abusing children, iv. 91

Accedas ad curiam, iii. 280

Acceptance of bills, ii. 117
of goods, ii. 69

Accession, property by, ii. 22

Accessory, iv. 39, 313, n.
after the fact, iv. 39, 42
punishment of, iv. 44, n.
before the fact, iv. 39, 40
punishment of, iv. 44, n.
what offences admit of, iv. 39, 40

Accident, iii. 441

Accidental fire, ii. 236

Accomplices, evidence by, iv. 395

Accord, iii. 258
and satisfaction, iii. *ib.*

Account, action of, ii. 104, n.; iii. 433
residuary, ii. 208, n.
stated, iii. 432

Accountant-general, iii. 458, n.

Accounts before chief clerk in chancery, iii. 602
of bankrupts, ii. 158

Accroaching, iv. 150

Accumulation of property, i. 555; ii. 13

Accusation, false, extortion by, iv. 128, 129
Ace of hearts, gambling by, iv. 272
Acknowledgments by mortgagees, i. 306
of debt, iii. 477, n.
of married women, i. 583
of vassalage, i. 175
Acquittal, effect of, iv. 434
Act of bankruptcy, ii. 152
of God, ii. 64, n., 141
of grace, ii. 387; iv. 468
of indemnity, ii. 622, n.
of parliament, i. 69, 615; ii. 382—390—see STATUTE
disobedience to, iv. 200
how cited, i. 69, n.
of parties, redress by, iii. 239
of Settlement, ii. 399, 441, 451, 470; iv. 517
of Supremacy, ii. 704
of Toleration, ii. 707; iv. 517
of Uniformity, ii. 707, 708
of Union with Ireland, i. 96; ii. 399, n.; iv. 519
of Union with Scotland, i. 87; ii. 399; iv. 517
statute law revision, i. 71, n.
to indemnify Bank of England, iii. 227, n.
Actio in personam, iii. 360, n.
in rem, iii. *ib.*
Action between partners, iii. 433
chose in, ii. 11, 45
dying with the person, iii. 370
for breach of copyright, ii. 37
for fatal injury, iii. 370, 443, n.
how commenced, iii. 487
of detinue, iii. 364
of dower—see DOWER
of ejectment, iii. 362, 617
of quare impedit—see QUARE IMPEDIT
on a judgment, iii. 575
on an award, iii. 261, n.
property in, ii. 11
remedy by, iii. 358—371, 486
right of, when it survives, iii. 369—371
under Judicature Act (1873), iii. 486
Actionable words, iii. 377
Actiones mixtæ, iii. 361, n.
Actions, different forms of, iii. 363
divisions of, iii. 360
limitation of, iii. 466—481
local, iii. 366
mixed, iii. 361, 396
of (generally), iii. 358—371
on promises, iii. 363, n.
on the case, iii. 363, n., 364
on tort, iii. 363
personal, iii. 363
possessory and droitural, iii. 390
proceedings in, iii. 482—604
proceedings in some particular, iii. 605—626
real, i. 314, n.; iii. 361, 396, 410, n.
transitory, iii. 366
Active trust, i. 374
Actor, reus and judex, iii. 270
Acts, cathedral, ii. 750
causing bodily harm, iv. 79
church building, ii. 741—747
commutation, ii. 722
local, i. 70
obsolete, i. 68, n.
personal, i. 70
private, i. 69, 615
public, i. 69
relating to India, i. 114, n.
to the colonies, i. 105, n., 106, n.
Addition of defendant, in indictment, iv. 369, 400
Ademption of legacy, ii. 206
Adequacy of consideration, ii. 59
Adherence to the king's enemies, iv. 158
Adjoining county, trial of offences committed in, iv. 366
Adjourned sessions, iv. 317, n.
Adjourning court to receive verdict, iv. 433
examination of bankrupt sine die, ii. 158
parliament, ii. 390
proceedings before a justice, iv. 338
Adjudication against non-trader, ii. 167
in bankruptcy, ii. 151—164

Ad faciendum et recipiendum, habeas, iii. 643, n.
prosequendum, habeas, iii. *ib.*
respondendum, capias, iii. 498, n.
habeas, iii. 643, n.
satisfaciendum, capias, iii. 572, n., 589, n.
habeas, iii. 643, n.
subjiciendum, iii. 643

Ad litem, guardianship, ii. 303, 312

Admeasurement of dower, i. 272, n.
of pasture, iii. 412, n.

Administration, ii. 179, 193
ad colligendum bona, ii. 195
bond, ii. 198
cum testamento annexo, ii. 196, 199, n.
de bonis non, ii. 198
durante absentiâ, ii. 196
durante minore ætate, ii. *ib.*
how granted, ii. 193
limited or special, ii. 198
of assets, iii. 454, n., 456
order of, ii. 193
pendente lite, ii. 196
suits, ii. 213

Administrators and executors, i. 199; ii. 178—213
origin of, ii. 183, 184

Admiralty, appeal from, iii. 345
commissioners of the, ii. 458, n.
court of, i. 67; iii. 319, 341—346; iv. 311
first lord of the, ii. 458
jurisdiction of, i. 116; iii. 342; iv. 311, 365
jurisdiction of county courts, iii. 291
proceedings in, iii. 344
who may practise in, iii. *ib.*

Admissibility of evidence, iii. 541

Admit, notice to, iii. 540

Admittance to copyhold, i. 633, 635

Admittendum clericum, writ ad, iii. 613, n.

Ad ostium ecclesiæ, dower, i. 270, 277

Ad quod damnum, writ, i. 458; iii. 135

Adulteration of provisions, iv. 269

Adultery, ii. 278; iv. 280, n.
action for, iii. 437, 438
damages for, iii. 438
effect of, on dower, i. 268
when ground for divorce, ii. 280, 281

Advancement of justice, homicide in, iv. 49
to children, ii. 211

Adverse possession, iii. 471, n.

Advertising rewards for stolen property, iv. 233

Advocate, Queen's, iii. 274, n.

Advocates, iii. 272, 274, n.

Advocati fisci, iii. 273.

Advowsons, i. 648, 649, n.; ii. 715
appendant, ii. 716
in gross, ii. *ib.*
limitation of actions for, iii. 474.
recovery of, iii. 415, 416
sale of, ii. 716
vested in Jew, ii. *ib.*
vested in papist, ii. *ib.*
writ of right of, iii. 415

Ægyptians, iv. 288, n.

Ætas infantiæ proxima, iv. 23
pubertati proxima, iv. *ib.*

Affectum, challenge propter, iii. 525; iv. 421

Affeerors, iv. 446, n.

Affidavits, iii. 559, 628
in chancery suit, iii. 599
in support of prohibition, iii. 637
new trials on, iii. 559
voluntary, iii. 632, n.

Affiliation, ii. 298

Affinity, ii. 242

Affirmation in lieu of oath, ii. 338; iii. 315, n., 529, n., 535; iv. 242, n., 336, n., 361, n.

Affray, sudden, iv. 54, 73

Affrays, iv. 252

Africa, Acts relating to, i. 105, n.

After demand, bill payable, ii. 121
sight, bill, ii. *ib.*

Age for different purposes, ii. 245, 302, 305; iv. 23—25
for liability for crime, iv. 23
for outlawry, iv. 383, n.
how computed, ii. 302
of consent to marriage, ii. 244
of nurture, ii. 265

Agency implied in partnership, ii. 101
of wife, ii. 63

Agent, frauds by, iv. 131, 132
general, ii. 66
how constituted, ii. 65
infant, ii. 304
liability of his principal, ii. 67
principal and, ii. 65
special, ii. 66
who may be, ii. 65, n.
wrongful conversion by, iv. 133

Aggravated assaults, iv. 97, 331

Aggregate corporation, i. 358; iii. 4
fund, ii. 578

Agistment, ii. 80

Agnati, i. 414

Agnation, i. 424, n.

Agnus Dei, importation of, iv. 182

Agreement, ii. 54—see CONTRACT.
specific performance of, iii. 461
to let, i. 513
when it must be stamped, ii. 62, n.

Agricultural fixtures, ii. 219

Agriculture, introductory of property in land, i. 157

Aid, extent in, iii. 667

Aiding prisoners to escape, iv. 230

Aids, feudal, i. 177, 195
in knight service, i. 195
in socage, i. 208
parliamentary, i. 165; ii. 347, 554

Air, right to use of, i. 160

Albert, the late Prince, ii. 449

Albinatus, jus, ii. 409, n.

Alderman, i. 126; iii. 35

Alderney, island of, i. 100

Alehouses, iii. 195
disorderly, iv. 271

Alfred the Great, i. 41, 123, n.; ii. 421, n.; iv. 486

Alias and pluries capias, iv. 383

Alienation by ecclesiastical persons, i. 473; iii. 784—740
by infants, i. 476
by married women, i. *ib.*
by particular tenants, i. 463
fine on, i. 178, 199, 209, 222
forfeiture by, i. 463
in copyhold, i. 222
in general, i. 199, 209, 467—see CONVEYANCES.
in mortmain, i. 454
of settled estates, i. 478
restraint of, i. 467
to corporations, i. 454

Alien enemy, ii. 17, 409

Aliens, i. 134
can hold real property, i. 477
can take by descent, i. 440
in parliament, ii. 338, 339, n.
legal rights of, ii. 17, 408—412
naturalization of, i. 441; ii. 408
registration of, ii. 409
removal of, from this country, ii. 409, n.
tracing descent through, i. 441
trial of, iv. 421
who are, ii. 404

Alimony, ii. 271, n., 278

Alkali Works Acts, iii. 178, n.

Allegations, defensive, iii. 315
in indictment, iv. 369

Allegiance, ii. 399; iv. 151
natural and local, ii. 403
oath of, ii. 305, 338, 402, n.

Allodial property, i. 185, 232

Allodium, i. 173, 185, 232, 394

Allotments under inclosures, i. 657

Allowance of expenses, iv. 435
of pardons, iv. 476
of poor-rate, iii. 67
to bankrupt, ii. 157, n.

Alluvion, i. 452

Alteration of deeds, i. 497
of highways, iii. 135
of wills, i. 600

Ambassadors, privileges of, ii. 484, 485; iv. 219

Ambiguity in a deed, i. 499
in a will, i. 602
latent, i. 500
patent, i. *ib.*

Ambulatory character of will, i. 588

Amendment to bill from Commons, ii. 386
of proceedings, iii. 563
of record in criminal cases, iv. 371
statutes of, iii. 563

Amends, in case of libel, iii. 383

A mensâ et thoro, divorce, ii. 277

Amercements, iii. 550; iv. 446

American colonies, Acts relating to, i. 105, n.
revolt of, i. 104

Amittere liberam legem, judgment, iv. 415

Ammunition, exportation or importation of, ii. 502

Amount for which a bill or note may be drawn, ii. 126

Amoveas manus, judgment of, iii. 657

Amputation of the hand, punishment of, iv. 187, 225, n.

Amsterdam, bank of, iii. 221

Analysts, official, iv. 269, n.

Anatomy, schools of, iii. 213

Ancestors, i. 232, 389, 687

Anglo-Saxon laws, i. 42

Animals, brood of, ii. 23
cruelty to, iv. 283
dangerous, iii. 376
domitæ naturæ, ii. 5
feræ naturæ, i. 160, 665; ii. 5, 19, 221
property in, ii. 4—9, 21
stealing, ii. 7

Animus furandi, iii. 423; iv. 113, 118
revertendi, ii. 6

Annates, ii. 532

Annoyance jurors, ii. 519, n.

Annual parliaments, ii. 326

Annuities, deferred, iii. 84
enrolment of, ii. 94
for lives, i. 649, n., 675; ii. 93
government, iii. 81, n., 84
immediate, iii. 84
to royal family, ii. 450, n.

Annulum et baculum, investitura per, ii. 665

Annus luctûs, ii. 288

Answer in chancery, iii. 597, 598
in spiritual court, iii. 316

Antenati, ii. 284, n.

Antenuptial settlement, ii. 275

Anticipation, clause against, ii. 274

Antient demesne, i. 223

Antiquaries, Society of, iii. 6.

Apology for libel, iii. 383

Apostasy, iv. 201

Apothecaries, iii. 206

Apparel, excess in, iv. 288, n.

Apparent, heir, i. 389.
partner, ii. 102, 103
right of possession, iii. 390

Appeal, iii. 577
against a summary conviction, iv. 378
court of, in chancery, iii. 603
from an order of removal, iii. 58
from county court, iii. 291, n.
from Court of Admiralty, iii. 345
from decision as to new trial, iii. 562, n.
from decree of dissolution or nullity of marriage, ii. 281
from determination of justice on point of law, iv. 379
from poor's rate, iii. 67
from revising barrister, ii. 355
in bankruptcy, ii. 163
in colonial causes, ii. 460
in criminal proceedings, iv. 441, 442
in ecclesiastical causes, ii. 527; iii. 307
in lunacy cases, ii. 460
in maritime causes, ii. *ib.*
lord justices of, iii. 331
prosecution by, iv. 378—380

Appeal, the court of, iii. 307, 355
judges of, iii. 357
to the judicial committee, iii. 346, 355
to House of Lords, i. 6; iii. 355
under Judicature Act (1873), iii. 356, 577

Appearance of defendant in an action, iii. 488, 491
of defendant in case of misdemeanor, iv. 389
in ejectment, iii. 618, 622
to indictment, iv. 382

Appellee, in an approvement, iv. 394, 414

Appendant, advowson, iii. 716
common, i. 650, 651

Application for discharge of bankrupt, ii. 161

Appointment, certificate of, in bankruptcy, ii. 164
of assignees in bankruptcy, ii. 156
of executor, ii. 190
public, demise of Crown, effect of on, ii. 392, n.
under a power, i. 549

Apportionment Act (1870), i. 261, 678
of rent, i. 261, 678; iii. 246, n.
of tithe rent charges, ii. 732

Appraisement, commission of, iii. 670

Apprehension of offenders, iv. 344
preventing, iv. 226

Apprentices, ii. 229, 230
parish, ii. 230; iii. 53

Apprenticeship, settlement by, iii. 53

Apprenticii ad legem, i. 17; iii. 272

Appropriation of benefices, iii. 677
of supplies, ii. 579, n.
of tithes, i. 117

Appropriators, ii. 679

Approvement, iv. 394, 411, 414

Approving common, i. 655; iii. 413, n.

Appurtenances, i. 486

Appurtenant, common, i. 650, 651

Arbitrary consecration of tithes, i. 118; ii. 724
fines, i. 629

Arbitration, iii. 259
by statute, iii. *ib.*
compulsory, iii. *ib.*

Archbishop, appeal to, ii. 668
courts of, iii. 306
election of, ii. 664
province of, i. 116; ii. 667
resignation of, ii. 673

Archbishops, ii. 328, 664—671

Archdeacon, ii. 675
court of, iii. 305

Archdeaconry, i. 116

Arches, court of, iii. 306
dean of, iii. *ib.*

Areopagus, court of, iv. 415, n.

Argument of demurrer, iii. 511

Aristocracy, government by, i. 31

Armigeri natalitii, ii. 616

Arms, carrying unusual, iv. 257
exportation and importation of, ii. 502
right of carrying, i. 150
training to the use of, i. *ib.*

Army, ii. 582—593
standing, ii. 589, n.; iv. 517

Arra, ii. 69, n.

Arraignment, iv. 389

Arrangement for separation of husband and wife, ii. 275
liquidation by, ii. 175
with creditors, ii. 175, 176

Array, challenge to, iii. 521; iv. 421
commissions of, ii. 585

Arrear, rent in, iii. 245—257, 473

Arrest, ambassadors privileged from, ii. 490
assault to prevent, iv. 97, n., 226
by an officer without warrant, iv. 348.
by a private person, iv. 350
by warrant, iv. 344—348
conventions as to, with France, United States, Denmark and Italy, iv. 348, n.

Arrest, eundo, redeundo et morando, iii. 277, n.
for debt, ii. 148, n., 342, n.
for felony or misdemeanor, iv. 344
homicide in resisting, iv. 352, n.
malicious, iii. 384
obstruction of, iv. 226
of absconding debtor, iii. 497, 498, n.
of attornies, iii. 277, n.
of barristers, iii. *ib.*
of criminals, rewards for, iv. 352
of debtor before judgment, ii. 148, n., 342, n.
of judgment, iii. 562; iv. 400, 404, 440
of members of parliament, ii. 342, n., 344
on information or complaint, iv. 346
under Debtors Act (1869), iii. 497
upon suspicion, iv. 349
without warrant, iv. 348—350
witnesses, when privileged from, iii. 532

Arsenic, sale of, iii. 178, n., 208, n.

Arson, iv. 99—104

Articled clerks, iii. 216, 218

Articles of association, iii. 20, n.
of faith, ii. 702
of impeachment, iv. 300
of Irish Union, i. 96
of Scottish Union, i. 87
of the navy, ii. 595
of war, ii. 590
the Thirty-nine, ii. 661, 687, 702
under manufacture, injury to, iv. 139

Artificers, ii. 617.

Artillery volunteers, ii. 588

Art-unions, iv. 275, n.

Ascending line of inheritance, i. 409, 411.

Asiatic cholera, iii. 170

Asportavit, doctrine of, iv. 114

Assault, iii. 373
aggravated, iv. 97, 331

Assault, indecent, iv. 92, 93, 98
on children, iv. 331
on police, iv. 188
on revenue officers, iv. 263, 264
on women, iv. 98, 331
when justifiable, iii. 374
with intent to murder, iv. 78
with intent to rob, iv. 127

Assaying gold and silver, ii. 524, n.

Assemblies, unlawful, iv. 198

Assembling of parliament, ii. 322

Assensu patris, dower, i. 270

Assent, declaration of, ii. 661, 686, 687, 695
of father to marriage, ii. 295
of husband to will, ii. 186
to a statute, i. 72; ii. 387, 388

Assessed taxes, ii. 568

Assessment to rates, iii. 66

Assessors, iii. 512, n.
in boroughs, iii. 36
under Church Discipline Act, ii. 672

Assets, i. 432; ii. 201, 204, 206
administration of, iii. 454, n., 456
in equity, i. 631
in futuro, judgment of, ii. 204
marshalling, iii. 457, n.

Assignee of lease, i. 524
of marine policy, ii. 130
of reversion, i. 301, 525

Assignment, i. 524
new, iii. 507
of a debt, ii. 46
of a term, i. 512
of bond, ii. 46
of chattels, ii. 46, 49
of chose in action, ii. 46, 124
of contingent interests, i. 472
of copyright, ii. 38
of dower, i. 271
of patent, ii. 31
of pay, ii. 45
of personalty, ii. 44—53
of policy, ii. 136
of right of action, iii. 369, 453

Assignment of right of entry, i. 301, 472
of satisfied term, i. 381
of securities, ii. 107
of share in ship, iii. 150
title by, ii. 44

Assigns, i. 469

Assimilation of law to equity, iii. 453

Assisa utrum, i. 226, n.

Assises de Jerusalem, iv. 413, n.

Assistance, writ of, iii. 602

Assistant judge of Middlesex sessions, iv. 320
overseers, iii. 64

Assize, commission of, iii. 352, n.; iv. 314
courts of, iii. 349, 485
grand, iv. 412, n.
judges of, iii. 349, 519; iv. 314
of arms, i. 198; ii. 584
of darreign presentment, iii. 415, n., 484
of mort d'ancestor, iii. 484
of novel disseisin, iii. *ib.*
of nuisance, iii. 405, n.
rents of, i. 676
writs of, iii. 390, n.

Assizes, iii. 519

Association, articles of, iii, 20, n.
memorandum of, iii. 20

Assuming to be a corporation, iii. 18

Assumpsit, action of, iii. 363, 364

Assumption of ecclesiastical titles, iv. 186

Assurances, common, i. 480

Assured, the, ii. 127

Asylum for county lunatics, iii. 113
for criminal lunatics, iii. 117
for paupers, iii. 68, n.

Atheist, as witness, iii. 535

Atheling, Edgar, ii. 422, 425, 433

Athelstan, ii. 421

Atholl, Duke of, i. 100

Attachment for contempt, iii. 261, 269, 316, 581, 602
of debts, iii. 588

Attachment of wages, iii. 589, n.
to enforce award, iii. 261

Attainder, i. 141, 446, 473; iv. 453
bill of, iv. 306, n.
effect of, on dower, i. 268
of trustee or mortgagee, i. 446

Attaint, auterfois, plea of, iv. 403
writ of, iii. 561, n., 577, n.; iv. 226, n.

Attempt to burn, iv. 103
to commit larceny, iv. 334
to commit offence, iv. 372
to endanger railway passengers, iv. 95, 96
to murder, iv. 78
to ravish, iv. 92
to rob, iv. 125, n., 127

Attendant term, assignment of, i. 380

Attestation of a deed, i. 495
of a will, i. 596, 599

Attesting witness, proof by, iii. 543

Attorney, appearance by, iv. 389
may be justice of the peace for county, iii. 220
warrant of, iii. 571, n.

Attorney-general, iii. 273, 274
information by, iii. 72, 374
of Queen Consort, iii. 274, n.

Attornies and solicitors, iii. 214, 270, 277, n.
privileges of, iii. 276
and Solicitors Act (1870), iii. 219

Attornment, doctrine of, i. 468, 470, 511, 534

Aubaine, droit de, ii. 409, n.

Auction of land, ii. 76, n.

Audit in bankruptcy, ii. 170
of public accounts, ii. 529
of railway accounts, iii. 186

Audita querela, iii. 577, n.

Auditors in boroughs, iii. 36

Augmentation of poor livings, i. 461; ii. 534

Aula regis, i. 16; iii. 335, 337, 339; iv. 491, 498

Aulnager, the royal, ii. 518

Aurum reginæ, ii. 446

Australian colonies, Acts relating to, i. 105, n.

Autrefois acquit, iv. 401
attaint, iv. 403
convict, iv. *ib.*

Author—see COPYRIGHT.

Autre droit, land held in, i. 318; ii. 266, 268
vie, tenant pur, i. 254, 258

Auxiliary jurisdiction of County Court, iii. 292

Average, adjusters, ii. 135
general, ii. 134
loss, ii. 132
stated, ii. 135, n.

Averia carucæ, iii. 251

Averium, i. 630

A vinculo matrimonii, divorce, ii. 278

Avoidance of a deed, i. 497

Avowry, iii. 614

Award, iii. 260—262
enforcement of, iii. 261
of restitution of goods, iv. 437
of tithe commissioners, ii. 731
setting aside, iii. 261

B.

Bachelor, ii. 613, n.
knight, ii. *ib.*

Backgammon, playing at, iv. 272

Backing warrants, iv. 347

Bacon, Lord, iii. 328

Bacon's Abridgment, i. 52

Bail, and commitment, iv. 354—359
bond, iii. 497
by coroner, iv. 357, n.
by Queen's bench, iv. 356
court, iii, 331, n.
excessive, i. 146; iv. 357
for a misdemeanor, iv. 356
for felony, iv. *ib.*
for treason, iv. *ib.*
in criminal cases, iv. 355
in error, iii. 580, n.; iv. 464

Bail, in replevin, iii. 421
insufficient, iv. 357
of absconding debtor, iii. 497
of juvenile offenders, iv. 357, n.
refusing, iv. 356
special, iii. 498, n.
to an action, iii. 497

Bailee, his property in goods, ii. 83
his right of lien, ii. *ib.*
larceny by, iv. 114
when liable for negligence, ii. 82

Bailiffs, ii. 632
bound, ii. 633
in inferior courts, ii. 632, n.
of hundreds, i. 126; ii. 633
special, ii. 633

Bailment, ii. 10.
action on a, iii. 432
contract of, ii. 80
different classes of, ii. 81, n.

Bakehouse, iii. 178, n.

Bakers, iv. 214, n.
dishonest, iv. 269, n.

Ballot Act (1872), ii. 370, n., 371; iii. 35, n.

Balnearii, iv. 121

Banc, sittings in, iii. 350, 485, 514

Banishment, i. 148; iv. 450

Bank charter, iii. 223, 225
crises, iii. 226, n.
holidays, ii. 119, n.
of England, iii. 222—227
notes, iii. 223
restriction of cash payments by, iii. 224

Bankers, embezzlement by, iv. 131
frauds by, iv. *ib.*

Banking companies, iii. 20, n., 229
partnerships, iii. 230
shares, sale of, iii. *ib.*

Bankrupt, allowance to, ii. 157, n.
bonâ fide conveyance by, ii. 168, 169
certificate of conformity to, ii. 161, n.
clergyman may be, ii. 151, 166, n.
discharge of, ii. 155

Bankrupt, examination of, ii. 156, 158
felony by, ii. 161
fraudulent conveyance by, ii. 152, 168
fraudulent preference by, ii. 168
frauds by, iv. 264
how adjudicated, ii. 151
last examination of, ii. 158, n.
liable to arrest when, ii. 159—161
misdemeanors by, ii. 159—161
must make full disclosure, ii. 158
must surrender himself, ii. *ib.*
non-trader may be, ii. 148
offer of composition by, ii. 193
peers, ii. 151, n., 347, 612
personal estate of, ii. 165, n.
protection of, ii. 161
public examination of, ii. 158
statement of accounts by, ii. *ib.*
trader, who is, ii. 149
trustee of, ii. 156, 164—167
what property vests in the trustee of, ii. 158
when not entitled to his order of discharge, ii. 163
who is capable of being, ii. 148—151

Bankruptcy, ii. 145—177
Act (1849), ii. 147, n.
Act (1854), ii. *ib.*
Act (1861), ii. *ib.*
Act (1869), ii. 148
acts of, under 32 & 33 Vict. c. 71, ii. 152
appeal in, ii. 163
arrangement and composition in, ii. 174
committee of inspection in, ii. 171
comptroller in, ii. *ib.*
court of, ii. 147; iii. 346
dividend in, ii. 170
effect of, on bankrupt's property, ii. 164
effect of, on pending action, iii. 593
first class certificate in, ii. 161, n.
history of the law of, ii. 145—148

Bankruptcy jurisdiction of county court, iii. 292
liquidation in, ii. 174
of a firm, ii. 150
of a peer, ii. 347
of justices, ii. 648
of member of parliament, ii. 366
of tenant of land, i. 250
petition in, ii. 153
proceedings in, ii. 155
proof of debts in, ii. 157, 163
rules and orders in, ii. 148, n.
title by, ii. 145—177
trustee in, ii. 156
winding-up of company in, ii. 154, n.

Banks, iii. 20, n., 221—230
branch, iii. 224
in general, iii. 228
joint-stock, iii. 20, 222, 224, 230
of deposit, iii. 223
of issue, iii. 223, 227
origin of, iii. 221
savings, iii. 81—86
with limited liability, iii. 229—see BANKERS—BANK of ENGLAND.

Banneret, knight, ii. 612

Banns, ii. 247, 249
in a wrong name, ii. 247, n.

Baptism, no fee for, ii. 740, n.

Baptisms, iii. 232

Baptists, ii. 706, n.

Bare possibility in law, i. 229

Bargain and sale, i. 362, 533
of personalty, ii. 47, n.
with release, i. 537

Barges on the Thames, iii. 187, n.

Barmote courts, iii. 348, n.

Bar of dower, i. 272
pardon pleaded in, iv. 404
pleas in, iii. 503; iv. 401
students, i. 19, 20
trial at, iii. 514; iv. 308, 418, 875

Baron and feme, ii. 238—see HUSBAND AND WIFE.
court, iii. 270
title of, ii. 604

Baronet, ii. 613

Baronies, i. 214
by tenure, ii. 606, n.
of bishops, ii. 604

Barratry, common, iv. 235
loss by, ii. 131

Barrister to certify savings banks' rules, iii. 84

Barristers, i. 17—20; ii. 617; iii. 272
revising, ii. 351, 363

Base fees, i. 239, 243, 579
services, i. 186

Basset, game of, iv. 272

Bastard, ii. 243, 283, 296—301
cannot be heir, i. 438
eigné, i. *ib.*
maintenance and affiliation of, ii. 296—301
marriage of, ii. 300
settlement of, ii. 300; iii. 52

Bastardy—see LEGITIMACY.
Laws Amendment Act (1872), ii. 298

Bath, Knight of the, ii, 613, 616, n.

Baths, public, iii. 178, n.

Battel, trial or wager by, iii. 513, n.; iv. 379, 411

Battery, iii. 373; iv. 97, 331
fear of, i. 141
of wife, iii. 439
when justifiable, iii. 374

Bawdy-houses, iv. 271

Beaconage, suit for, iii. 343

Beacons, ii. 502; iii. 159

Beadle, ii. 701, n.

Beast, of forest, &c., i. 665
when distrainable, iii. 249

Beasts, stealing, iv. 121

Beating and wounding, iii. 373

Bed of the sea, i. 671

Bedells of the universities, iv. 328

Bedfordshire, registration in, i. 614, n.

Beer Acts, iii. 196

Bees, ii. 5, 6, n., 7, n.

Behaviour, good, security for, iv. 295

Beheading, iv. 164, 479

Bench, common, court of, iii. 334
Queen's—see QUEEN'S BENCH.

Benchers, the, i. 19

Bench-warrant, iv. 381

Benefice, iii. 306, n.
(or feud), i. 173; iv. 173

Beneficed clergymen bankrupt, ii. 166, n.

Benefit building societies, iii. 89—91
of clergy, ii. 610, n., 662; iv. 9, n., 20, n., 74, 119, 127, 397, 440, n.

Benevolences, i. 166

Benevolent institutions, iii. 70, 80

Berwick-upon-Tweed, i. 90

Best evidence, iii. 541

Bethlehem, iii. 112, n.

Betting-houses, iv. 273, n.

Beverley, disfranchisement of, ii. 334, n.

Beyond the seas, iii. 471, 476

Bible, printing The, ii. 39

Bigamy, iv. 277

Bill, iii. 486
attorney's, iii. 218
for letters-patent, i. 619
for naturalization, ii. 410
in chancery, iii. 596
in equity, ii. 104
in parliament, ii. 384
of exceptions, iii. 546
of exchange, ii. 114, 124; iii. 434, 492, n., 542, n.
of exchequer, ii. 574
of exclusion, ii. 435
of foreclosure, i. 307
of indictment—see INDICTMENT.
of lading, ii. 49, 89
of Middlesex, iii. 333, n.
of review, iii. 603
of Rights, ii. 399, 469; iv. 517
of sale, ii. 49
filing, ii. 52

Bill of supply, ii. 347
solicitor's, iii. 218
to redeem, i. 306
true, iv. 367

Bills vera, iv. 367

Billeting soldiers, ii. 589

Billiards, game of, iv. 272, n.

Bills of Sale Act, ii. 52

Bills or notes, forgery of, iv. 145

Binding over for good behaviour, iv. 295
to keep the peace, 293
to prosecute, iv. 291, n.

Birth, concealment of, iv. 283
registration of, ii. 251; iii. 235
settlement by, iii. 52
time of, after conception, ii. 285, 287, n.

Bishops, ii. 328, 664, 671
coadjutor, ii. 673, n.
colonial, i. 102, n.
courts of, ii. 672; iii. 305
election of, ii. 664, 666.
former jurisdiction of, as to probate, ii. 191
Indian, i. 112
in the house of lords, ii. 328
number of, i. 116; ii. 668
precedency of, ii. 615, n.
preferments of such as are made, ii. 673
resignation of, ii. *ib.*
right to sit on trials of peers, iv. 305
substitution of one bishop for another as trustee, ii. 671, n.
suffragan, ii. 669
temporalities of, ii. 530
trial by, iv. 305

Bissextile year, i. 283

Black mail, i. 676

Blanch-holding, i. *ib.*

Blank, indorsement in, ii. 117

Blasphemous libels, iv. 208, 259

Blasphemy, iv. 207

Blood, corruption of, i. 164, n., 443, 454
inheritable, i. 436
of the purchaser, i. 397
royal, ii. 450

Blood, whole and half, i. 420, 421

Board of Charities, iii. 74
of Control, i. 111
of Health, iii. 38, n., 176
of Inland Revenue, iii. 227
of Local Government, iii. 49, 176
of Trade, ii. 462, 501, 502, 520, 536, 544, 731; iii. 147, 149, 151—154, 157, 163, 183
returns, ii. 462, n.
Poor Law, iii. 49, 176
School, iii. 94

Bodily injuries dangerous to life, iv. 79
rights, how protected, i. 139

Body corporate, i. 358; iii. 2

Boiling to death, iv. 69, n.

Bombay, Bishop of, i. 112

Bona confiscata, ii. 550
ecclesiastica, iii. 585
fide travellers, iii. 199
notabilia, ii. 192, 193; iii. 305, n.
vacantia, ii. 539
waviata, ii. 547

Bond, administration, ii. 198

Bonds, ii. 108
action on, iii. 434, 450

Bono et malo, writ de, iv. 315

Book, copyright in, ii. 36
post, ii. 570

Booths for polling, ii. 371
unlicensed, iv. 272

Booty of war, iii. 343

Borough and Local Courts Act (1872), iii. 294, 653
boards of health, iii. 38, n.
bridges in, iii. *ib.*
burials in, iii. *ib.*
courts of record, iii. 37, 284, n., 293, 294, n.
definition of, i. 125
Electors Act (1868), i. 125, n.
English, custom of, i. 54, 56, 211
fund, iii. 38
gaols, iii. 38, n.
justices, ii. 644, n.; iii. 37
libraries, iii. 39, n.
lunatic asylums, iii. 38, n., 118, n.
municipal, i. 125, n.

Borough, parliamentary, i. 125, n.; ii. 357
police, ii. 656, 657; iii. 88, n.
prosecutions, iii. 38, n.
quarter sessions, iii. 37; iv. 321
rate, i. 129, n.; iii. 39.
recorder of a, iii. 37
voters in a, ii. 356—363

Boroughs, disfranchised, ii. 334, n., 380, 384
incorporated, ii. 656; iii. 33—41
representation of, ii. 334, 356—363, 370, 372

Borrowing money, ii. 90

Borsholder, i. 124; ii. 653

Botes by tenant for life, i. 256
by tenant for years, i. 287

Bottomry, ii. 92

Bound bailiffs, ii. 633

Boundaries of boroughs, iii. 84, n.
of counties in indictments, iv. 363
of parishes, i. 123, n.

Bounty on fisheries, iii. 166
Queen Anne's, ii. 534

Bowling, game of, iv. 272, n.

Bracton, i. 51; iv. 500

Branch banks, iii. 224

Brawling in churches, iii. 310, n.; iv. 250

Breach of bond, ii. 110
of charitable trust, iii. 77—80
of close, iii. 399
of contract, iii. 429
of covenant, i. 490, 514
of pound, iii. 254
of prison, iv. 227
of privilege, ii. 344
of the peace, iv. 248
of trust, iii. 460

Bread, adulteration of, iv. 269

Break of the descent, i. 480

Breaking into a house, iv. 104, 111, 123
open doors to arrest, iv. 346
out of a house, iv. 109
the assize of bread, iv. 104, 265, n.

Brehon law, i. 91; iv. 379, n.

Brevia testata, i. 495

Bribery in elections, ii. 374—377
of judges, iv. 244
of officers, iv. 245

Bridewell, iii. 122

Bridges, iii. 128
destroying, iv. 140
in boroughs, iii. 38, n.

Bridgman, Sir Orlando, i. 332

Bridgwater, disfranchisement of, ii. 334

British Columbia, Acts relating to, i. 105, n.
Kaffraria, Acts relating to, i. *ib.*
constitution, i. 82
islands, i. 98
possessions abroad, i. 101; iii. 148.
seamen, iii. 150
ships, iii. 148; iv. 365, n.
subjects, i. 134; ii. 406

Britons, laws of antient, i. 40; iv. 482

Britton, iv. 503

Brixton, convicts at, iii. 126, n.

Broad arrow, royal mark of, iv. 194

Brokers, ii. 77
fraudulent conversion by, iv. 131
licensed, ii. 78, n.

Brood of animals, ii. 23

Brooke's Abridgment, i. 51

Brothels, iv. 83, 271

Brothers, descent between, i. 419, 445

Budget, the, ii. 554

Buggery, iv. 92

Building Act, iii. 179, n.
societies, iii. 89—91

Buildings, burglary in, iv. 106
riotous destruction of, iv. 250
setting fire to, iv. 102, 103

Bull-baiting, iv. 283

Bullion, sale of, ii. 519, n.
in the Bank of England, iii. 226, 228, n.

Bulls, papal, iv. 177, 179

Buoys, iii. 160
injuring, iv. 140
Burgage, tenure in, i. 211
Burgess, iii. 34
roll, iii. 34, 40
Burgesses in parliament, ii. 333
municipal rights of, iii. 34—40
or freemen, ii. 360
Burglarious instruments, iv. 111
Burglary, iv. 104—111
killing a man committing, iv. 50
punishment for, iv. 110, 111
Burial fees, ii. 740
in boroughs, iii. 88, n.
of a felo de se, iv. 62
of paupers, iii. 51, n.
Burials Acts, iii. 178, n., 179, n., 232, n.
registration of, iii. 232
Burning amounting to arson, iv. 100
in the hand, iv. 441, n.
of chapels and churches, iv. 102
of corn or grain, iv. 103
of heretics, iv. 204
of houses, iv. 99—102
of ships, iv. 195
of women for treason, iv. 77, 164, n.
Butlerage of wines, ii. 561
Buying, as a trader, ii. 150
Bye-laws of College of Physicians, iii. 212
of corporations, iii. 12
of railways, iii. 183
of school boards, iii. 96
By the country, trial, iii. 513—see JURY, TRIAL BY.

C.

Cabinet council, ii. 458
ministers, ii. *ib.*
Caerleon, Archbishop of, ii. 667, n.
Cairns' (Lord) Act, iii. 461, n.
Calcutta, Bishop of, i. 112
Calendar month, i. 283
of prisoners, iv. 478
Call to the bar, i. 19
Calling the jury, iii. 520
the plaintiff, iii. 551
Calls on contributories, iii. 24
Cambridge, University of, i. 67; iii. 6, 27, 76, 299, 301; iv. 326, n.
Campbell's (Lord) Act, iii. 371, n.
Canada, Acts relating to, i. 105, n.
Canal companies, ii. 88
Cancelling deeds, i. 497
letters-patent, iii. 320, 594, n., 668
wills, i. 596
Canon law, i. 8, 13, 64; iii. 303, n.; iv. 203
in what courts used, i. 67
Canonical degrees, ii. 194
disabilities, ii. 240
obedience, ii. 671, n.; iv. 179
purgation, iv. 407
Canonries, ii. 675
suspension of, ii. 750
Canons by convocation, i. 66; ii. 526
of a cathedral, ii. 675
of descent, prior to 1st January, 1834..i. 391, n.
since 1st January, 1834 .. i. 391—430
of 1605..i. 66
Canute, King, ii. 422
Capacity for guilt, iv. 21
to purchase or convey—see ALIENATION — CONVEYANCES.
Cape, grand, iii, 606, n.
of Good Hope, Acts relating to, i. 105, n.
Capias, iv. 382
ad respondendum, iii. 498, n.
ad satisfaciendum, iii. 572, n., 589, n.
alias and pluries, iv. 383
in withernam, iii. 423, n.
on informations, iv. 388
on outlawry, iv. 383
utlagatum, iv. 384
Capita, distribution per, ii. 211
succession per, i. 407

Capital punishment—see EXECUTION.
Amendment Act (1868), ii. 641; iv. 166, 453
frequency of, iv. 20, n., 199
justification for, i. 143; iv. 12
no criterion of felony, iv. 9

Capite, tenants in, i. 186, 196, 209, 235, 470

Capitular and Episcopal Estates Act, ii. 738

Capture and recapture, ii. 18

Caput lupinum, iv. 384

Cards, gaming by, iv. 378

Carnal knowledge of females, iv. 85—92

Carriages, public, iii. 180—190

Carrier, common, ii. 57, 86

Carriers' Act, ii. 87

Carriers by land, ii. 87; iv. 214, n.
by sea, ii. 89
railway companies as, ii. 88, n.

Carrying away and stealing goods, iv. 114

Cart-bote, i. 256

Carucæ averia, iii. 251

Case, action on the, iii. 363, n., 364
special, iii. 59, 552, 567; iv. 433
stated by justice, iv. 339
stating to jury, iii. 529

Casters, assaulting, iv. 267

Casting an essoign, iii. 606, n.

Castles, ii. 498

Castration, iv. 87

Casts, copyright in, ii. 41

Casual affray, iv. 54
ejector, iii. 618, 620, n.
poor, iii. 56, 57

Catalla, i. 280.

Cathedral Acts, ii. 750
churches, ii. 675
preferments, ii. 684, n.

Catholic Emancipation Act, ii. 709

Cats, antient law as to, ii. 7, n.

Cattle, contagious diseases among, iii. 178, n.
cruelty to, iv. 283
impounded, iii. 255
injured by a dog, iii. 376
malicious injuries to, iv. 140
stealing, iv. 121
trespass by, iii. 400

Causa jactitationis matrimonii, ii. 238, n.

Cause, challenge for, iv. 422

Causes in personam, iii. 486
in rem, iii. *ib.*
of action, joinder of, iii. 509

Caveat against institution, iii. 417
against marriage, ii. 248, n.; 252, n.
against patent, ii. 32
against probate, ii. 191, n.
emptor, ii. 76

Cayman Islands, Acts relating to, i. 106, n.

Celebration of marriage, ii. 266—281

Censorship of the press, iii. 191

Census of 1871, i. 134, n.

Centenarius, i. 126, n.

Centeni, iii. 281, n.

Centesimæ, ii. 91

Central Criminal Court, i. 128, n.; iv. 308, n., 312, 316, 366
removal of indictment to, iv. 315, n., 359, n., 387, 389, n.

Cepit et asportavit, doctrine of, iv. 114

Certain services, i. 187

Certainty in indictments, iv. 368
of punishment, iv. 18

Certificate, marriage by, ii. 251—256
of apothecary, iii. 206
of appointment, ii. 164
of attorney, iii. 217
of bankrupt, ii. 161, n.
of conformity, ii. *ib.*
of conviction, iii. 539, n.
of dismissal of charge, iv. 334
of engineers, iii. 151, n.
of lunacy, iii. 114, 118
of naval service, iii. 151

Certificate of settlement, iii. 46, n.
of ship master, iii, 151, 190
to kill game, ii. 20
trial by, iii. 513, n.

Certified copies, falsification of, iv. 224
place of worship, ii. 707

Certiorari, in replevin, iii. 422
writ of, iii. 59, 290, n., 652; iv. 303, 307, 316, n., 319, 385, 388

Cessio in jure, i. 575, n.

Cession of benefice, ii. 691
colonies gained by, i. 101, 102
Roman law of, ii. 146

Cestui que trust, i. 372
use, i. 361, 363
vie, i. 258

Chains, hanging in, iv. 75

Chairing at elections, ii. 377

Challenge de medietate linguæ, iv. 421
for cause, iv. 422
of jury, iii. 521
peremptory, iv. 422
propter affectum, iii. 525; iv. 421
defectum, iii. 524; iv. 421
delictum, iii. 526; iv. 421
honoris respectum, iii. 524; iv. 421
to array, iii. 521; iv. 421
to fight, iv. 258
to the favour, iii. 522
to the polls, iii. 523; iv. 421

Chamber business, iii. 341, 602, 627, 628, n.

Chamberlain, Lord, licence of, iii. 201

Champerty, iv. 237

Champion, iv. 412

Chance medley, iv. 54
when excuse for crime, iv. 30.

Chancel, ii. 714; iii. 314, n.

Chancellor, the lord, iii. 320
guardianship of, ii. 311

Chancellor, the lord, his livings, ii. 739
is speaker of the House of Lords, ii. 382
jurisdiction of, iii. 321
killing, iv. 159
precedency of, ii. 614, n.

Chancellor of a diocese, ii. 672
of the duchy of Lancaster, iii. 347
of the Exchequer, ii. 458, 614, n.
of the university, iv. 326
his court, i. 67; iii. 299, n., 300, n.; iv. 325

Chancery, appeal from, iii. 331
common law side of, iii. 322, n.
division of high court of justice, iii. 331, n., 353
equity side of, iii. 322
high court of, iii. 320—331
original writ out of, iii. 323, 489
origin of the name of, iii. 320
proceedings in, iii. 595
suit in, iii. *ib.*

Change of venue, iii. 501

Channel Islands, i. 100; iii. 160, 476, n.

Chapels, ii. 745
free, ii. 746, n.
of ease, ii. 745
parochial, ii. 746
private, ii. 745
proprietary, ii. 746
public, ii. 745

Chapter, dean and, ii. 674

Character of servant, ii. 233; iii. 380

Charge in equity, i. 252, 378, 631; iii. 573, n.
on benefice, ii. 735
to the grand jury, iv. 361
to the jury, iii. 548

Chargeable lunatics, iii. 118
paupers, iii. 56—59

Charging real estate with debts, i. 434, n.
stock in execution, iii. 588

Charitable commission, iii. 71
legacies, iii. 80
Trusts Acts, iii. 74
trusts, iii. 77—80
uses, i. 250, 462, 594; iii. 70

Charities, jurisdiction of the Chancellor as to, iii. 78, 455
laws relating to, iii. 70—91
registry of, iii. 73

Charity commissioners, iii. 74

Charles I. . . ii. 434; iv. 513
II. . . ii. 435; iv. 514

Charta, Magna—see MAGNA CHARTA.
de Foresta, i. 667; iv. 499

Charter deeds, ii. 222
house, iii. 14, 97
of Bank of England, iii. 223, 225
of College of Physicians, iii. 205
of incorporation, iii. 8, 9, 18
or deed, i. 481
party, ii. 89, 140; iii. 435

Charterer, ii. 140

Chase, i. 669

Chastity, homicide in defence of, iv. 51

Chatham, convicts at, iii. 126, n.

Chattels, i. 280; ii. 2
assignment of, ii. 47
delivery of, ii. 48
gift of, ii. 47
incorporeal, ii. 9
personal, i. 281; ii. 2, 9
property in, ii. 10
real, i. 167, n., 280; ii. 2
ouster of, iii. 389
subject to law of perpetuity, ii. 13

Chaud medley, iv. 54

Cheap trains, iii. 185

Cheating, iv. 264
at play, iv. 274

Chelsea Hospital, ii. 593, n.

Chemists, iii. 207, 213

Cheque, crossed, ii. 117, n.
on a banker, ii. *ib.*

Chester, county palatine of, i. 129
earl of, ii. 450

Chief, constable, ii. 652, n., 656
extent in, iii. 667

Chief justices, iii. 341
rents, i. 676; iii. 246

Child, abandoning, iv. 94
abduction of, ii. 294; iii. 440, n.; iv. 94
abusing, iv. 91
and parent, law of, ii. 283—301
committing crime, iv. 23
duty of, towards parents, ii. 296—see PARENT.
illegitimate, ii. 283, 286, 296—301
in womb, i. 139
legitimate, ii. 244, 283—288
marriage of, ii. 248, 252, 295
property of, ii. 295
stealing, iv. 93

Chiltern Hundreds, ii. 881

China trade, i. 114, n.; iii. 147, n.

Chirograph, i. 483, 562

Chivalry, court of, iii. 335, n., 336, n.
tenure in, i. 188
abolished, i. 204

Chloroform, assault with, iv. 82

Choice of trustee, ii. 156

Cholera, iii. 170

Chorepiscopi, ii. 669, n.

Chose in action, ii. 11, 45, 124

Christian burial denied to felo de se, iv. 62
courts—see ECCLESIASTICAL COURTS.
religion, denying, iv. 201
part of law of England, iv. 202

Christmas day—see SUNDAY.

Church authorities, ii. 660—701
Building Acts, ii. 741, 747
commissioners, ii. *ib.*
burglary in, iv. 105
compulsory attendance at, ii. 706
Discipline Act, ii. 672; iii. 310, n.
doctrines, ii. 702—711
endowments, ii. 712—743
estate commissioners, ii. 738, 748, n.
exempt from rate, iii. 65
head of, ii. 524
lands, ii. 712

Church leases, ii. 734
marriage in a, ii. 247
parish, i. 118
provisions of the, ii. 712—743
rate, ii. 698; iii. 313
reforms, ii. 748
repairs, ii. 698; iii. 313
riotous demolition of, iv. 250
service, ii. 703, 704, n.
wardens, ii. 696, 700, n.; iii. 8, n., 43, 586
yards, ii. 714

Cider, iii. 195

Cinque Ports, ii. 499, n., 545, n.
courts in, iii. 347, n.
Lord Warden of, ii. 375, 499, n.
which are the, ii. 499, n.

Circuits, i. 128; iii. 349, 352, n.
of County Court Judges, iii. 285

Circulating medium, ii. 68, 520

Circumspectè agatis, iii. 310

Circumstantial evidence, iii. 545

Circumstantibus, tales de, iii. 528

Citation, iii. 486

Cities, representation of, ii. 334—see BOROUGHS.

City, definition of the word, i. 124
of London Court, iii. 293, n.

Civil and criminal injuries, i. 138
corporations, iii. 6, 26
death, i. 141, 256
disabilities of marriage, ii. 241
division of England, i. 123
government, ii. 316
injuries at common law, iii. 372—445
injuries cognizable in equity, iii. 446—465
law, i. 8, 12, 62—64, 67; iii. 359
in what courts used, i. 67
declaration of barons as to, i. 62
lay incorporations, iii. 6, 26
liberty, ii. 466
list, ii. 516, 579
redress, iii. 240
subjection, iv. 31

Civilians, kinship among the, ii. 194

Claim of conusance, iii. 300, n.; iv. 326

Claim to vote at elections, ii. 351, 363, 373

Claims by the crown, limitation of, iii. 469, 479

Clarendon, Constitutions of, iv. 497

Clausum fregit, trespass quare, iii. 398

Clementine Constitutions, i. 65

Clergy, benefit of, ii. 610, n., 662, n.—see BENEFIT OF CLERGY.
disabilities of, ii. 663
exemptions of, ii. 662
not eligible to House of Commons, ii. 367
privileges of the, ii. 661
resignation by, ii. 694
the, ii. 660
their introduction of the civil law, i. 12

Clerical Disabilities Act, ii. 694
Subscription Act, ii. 661, 687, 695

Clericum, ad admittendum, iii. 613, n.

Clerk, deprivation of, ii. 693
induction of, ii. 686
institution of, ii. *ib.*
not a servant, ii. 227
of parliament, ii. 387
of the market, court of, iv. 323
of the peace, ii. 354, n.; iv. 320
parish, ii. 700
presentation of, ii. 684
residence of, ii. 688—691

Clerks, articled, iii. 218
embezzlements by, iv. 129
in chancery, iii. 324
larcenies by, iv. 129
of attornies, ii. 218
why so called, i. 11

Clients, iii. 219

Clipping the coin, iv. 161, 189

Close, breach of, iii. 399
rolls, i. 619
writ of right, i. 224
writs, i. 619.

Closing licensed houses, hours for, iii. 197

Club, liability of, ii. 100, n.

Coadjutors, ii. 669, n., 673, n.

Coal mines, firing, iv. 104

Coast guard, ii. 598
trade, iii. 145, 159
of India, iii. 147

Coat armour, marshalling of, iii. 335, n.

Cock fighting, iv. 283

Cockades at elections, ii. 376

Code of Justinian, i. 61
of Theodosius, i. 63

Codicil, i. 589; ii. 188

Coercion by husband, iv. 32
of wife, ii. 272

Cognati, i. 414

Cognizance, claim of—see CONUSANCE.
fine sur, &c., i. 562
in replevin, iii. 614

Cognizee of a fine, i. 561

Cognizor of a fine, i. 561

Cognovit actionem, iii. 567, 571, n.

Coif, degree of the, iii. 272, n.

Coin, copper, iv. 192
decrying the, ii. 524
defacing, iv. 193
exportation of, iv. *ib.*
foreign, iv. *ib.*
gold, iv. 189
melting, iv. 193, n.
offences relating to the, iv. 188—194
silver, iv. 189
treasons relating to the, iv. 189, 190, n.

Coinage, prerogative as to, ii. 522, 549

Coke, Sir E., i. 50, 52; iii. 327
upon Littleton, i. 52

Collateral inheritance, i. 417
warranty, i. 489

Collatio bonorum, ii. 211

Collation of benefice, ii. 686

Collecting assets, ii. 199
debts of bankrupt, ii. 157, n.
poor rate, iii. 64

College Charter Act (1871), iii. 9, n.
leases, i. 70, 474; ii. 735
of Physicians, iii. 6, 9, 26, 205
of Surgeons, iii. 6, 205, 206

Colleges, iii. 6, 27—see UNIVERSITIES.
copyright belonging to, ii. 40

Collegia, iii. 3

Collegiate churches, ii. 671, n.

Collusion with bankrupt, ii. 169

Colonial attornies, iii. 215, n.
bishops, i. 102, n.
church, i. *ib.*
governors, i. 102
legislatures, i. 103, n.
medical men, iii. 210, n.
mints, ii. 521, n.
postage, ii. 570, n.
slavery, i. 108
voyages, iii. 189

Colonies, i. 101
Acts relating to the, i. 105, n., 106, n.
appeals from, ii. 461
secretary for the, ii. 459

Colonizing, right of, i. 157

Colour in pleading, iii. 505, n.

Combat, trial by, iv. 411

Combination to raise wages, iv. 240
unlawful, iv. 198

Comes, i. 126

Comites, i. 173; ii. 603

Commencement of statutes, i. 72

Commendam, livings in, ii. 692; iv. 174

Commerce, sovereign the arbiter of, ii. 516

Commercial convention with America, iii. 167

Commission, assent to bill by, ii. 387, 388
bribery, ii. 381
education, iii. 100
high, court of, iii. 309, n.
of appraisement, iii. 670
of array, ii. 585
of bankruptcy, ii. 147
of charitable uses, iii. 71
of gaol delivery, iii. 352; iv. 315
of lunacy, ii. 511; iii. 119
of nisi prius, iii. 352
of oyer and terminer, iii. 352; iv. 313
of review, iii. 307, n.
of the peace, ii. 642; iii. 37, 352; iv. 320

Commission, sale of, ii. 589, n.
to examine witnesses, iii. 532, 533, n.

Commissioners, charity, iii. 74
church estate, ii. 748, n.
Clauses Act, iii. 9, n.
copyhold, i. 643
ecclesiastical, ii. 738, 739, 748
estate, ii. 738
for affairs of India, i. 111
for building new churches, ii. 747
for reduction of national debt, iii. 82, n.
inclosure, i. 656
in lunacy, iii. 118
of admiralty, ii. 458, n.
of assize, iii. 349
of audit, ii. 529, n.
of education, iii. 100
of excise, iv. 330
of inland revenue, ii. 567
of land tax, ii. 559, n.
of northern lighthouses, iii. 160
of oyer and terminer, iii. 352; iv. 313
of patents, ii. 28
of railways, iii. 184, n.
of revenue, iv. 330
of sewers, iii. 296
of stamps—see INLAND REVENUE.
of turnpike roads, iii. 131
of woods and forests, ii. 535
of works and public buildings, ii. 535, n.
poor law, iii. 49
tithe, i. 643, n.

Commitment and bail, iv. 354—359
for default in payment of money, iii. 577, n.
of a bill, ii. 385
on a judgment summons, iii. 289, n.
to house of correction, iii. 122

Committal by coroner, ii. 640

Committal to house of correction, iii. 122

Committee, education, ii. 462
judicial, ii. 34, 461; iii. 346, 355
of elections, ii. 379, n.
of inspection, ii. 156, 171
of lunatics, ii. 513; iii. 113
of parliament, ii. 383
of the whole house, ii. 385
of ways and means, ii. 554
select, ii. 385

Commodatum, ii. 81

Commonable beasts, i. 651; iii. 412

Commonalty, the, ii. 601, 612

Common appendant, i. 650
approving, i. 655
appurtenant, i. 651
assent of the realm, i. 165
assurances, i. 480
barratry, iv. 235
because of vicinage, i. 651
bench, court of, iii. 334
carrier, ii. 86
counts, iii. 432, n.
disturbance of, iii. 411
enclosure of, i. 654—657; iii. 413
form, proof of will in, ii. 191, 193
fund of a union, iii. 51, 62, n.
gaming houses, iv. 273
in gross, i. 652
in the soil, i. 654
informer, iii. 479, 576
innkeeper, ii. 84
jury, iii. 516
law, i. 9, 40, 60
lodging-houses, iii. 177, n.
nuisance, iv. 270
obstructing, iii. 413
occupancy, i. 448
of estovers, i. 654
of pasture, i. 649
of piscary, i. 653
of shack, i. 652
of turbary, i. 653
pleas, court of, i. 16; ii. 379; iii. 333, 334, 393
pleas at Lancaster, iii. 349
division of high court of justice, iii. 353
possibility, i. 328
prayer, speaking against the book of, iv. 209

Common recoveries, i. 247, 457, 568; iv. 505
sans nombre, i. 653
scold, iv. 276
serjeant of London, iv. 316
surcharge of, iii. 412
tenant in, i. 351
vouchee, i. 569
without stint, i. 653; iii. 412

Common Law Procedure Acts, iii. 490, n., 498
side of Court of Chancery, iii. 322, n.

Commons, i. 649
House of, ii. 326, 333—see PARLIAMENT.

Communication between railway guards and passengers, iii. 186

Communications, privileged, iii. 536, 537

Communion of goods, i. 153

Commutation of tithes, ii. 729—733
Acts, ii. 731

Companies Act (1862), iii. 20, 229
(1867) iii. *ib.*
Clauses Act, iii. 9, n.
life assurance, ii. 463
shares in, ii. 221, n.

Company, directors of, iii. 19, n.
joint stock, ii. 129; iii. 19

Comparison of handwriting, iii. 545

Compassing the death of the sovereign, iv. 153

Compensatio, iii. 504, n.

Compensation to buyer, ii. 74, n.

Competency of ship's master or mate, iii. 151
of witness, iii. 533, 534

Complaint before a justice, iv. 335, 345
statement of, iii. 500

Complete specification, ii. 29

Composition deeds, ii. 177, n.
liquidation by, ii. 175
real, ii. 727

Compound larceny, iv. 123

Compounding felonies, iv. 232
informations, iv. 234
misdemeanors, iv. *ib.*

Comptroller and auditor general, ii. 529
in bankruptcy, ii. 171
of the household, iv. 325

Compulsion, excuse of, iv. 31

Compulsory admittance, i. 637
education, iii. 96
oath, iv. 198
reference, iii. 259, 555
vaccination, iii. 171

Computation of kinship by canonists, ii. 194
by civilians, ii. *ib.*
time, i. 283

Comyn's Digest, i. 52

Concealing a birth, iv. 283
treason, iv. 165
treasure trove, iv. 199

Concealment in policy, ii. 139
of deeds, iv. 147
of felony, iv. 283

Conception, time of birth after, ii. 287

Concessit, fine sur, i. 563

Conclusion of a deed, i. 491

Concord of a fine, i. 561

Concurrent consideration, ii. 60
writs of summons, iii. 494

Condemnation as prize, ii. 18

Condition, breach of, i. 300, 303, 304, n.
estate upon, i. 297, 488
express, i. 297
illegal, i. 302
implied, i. 297
impossible, i. 302; ii. 64, 109
in deed, i. 298, 488
of bond, ii. 109
precedent, i. 298; ii. 64
repugnant, i. 302
subsequent, i. 298, 302
waiver of, i. 308

Conditional fees, i. 289
limitation, i. 299, 301, 546, n.
pardon, iv. 475
surrender, i. 637

Conductors of public carriages, iii. 181

Coneys, ii. 21

Confectioner, licensed to keep refreshment house, iii. 200

Conference between lords and commons, ii. 413

Conferring a living, ii. 684
holy orders, ii. 660

Confession and avoidance, pleading in, iii. 504
of indictment, iv. 394, 427
or default, judgment by, iii. 569

Confessor, Edward the, iv. 487, 496

Confirmatio chartarum, i. 196; ii. 469, 560

Confirmation, implied, i. 521, 522
of bishop, ii. 665, 667; iv. 186

Confiscata, bona, ii. 550

Confiscation on attainder, iv. 454
revenue from, ii. 550

Conformity, certificate of, ii. 161, n.

Confusion of goods, ii. 23

Congé d'élire, ii. 666, 667, n.; iv. 496

Congregation, disturbing a, ii. 699

Conies, i. 670

Conjugal rights, restitution of, ii. 238, n., 279, n.

Conjuration, iv. 210

Conquest, colonies gained by, i. 101
Norman, i. 387; ii. 428; iv. 490
of Ireland, i. 91
of Wales, i. 84
technical meaning of the term, i. 386, 424

Consanguinity, ii. 194, 242
Table of, ii. 194

Conscience, courts of, iii. 284

Conscientious objection to be sworn, iii. 315, n., 535, 536, n.

Consecrated churchyards, gifts of land to, ii. 715, n.

Consecration, loss of living by, ii. 692
of bishops, ii. 667, 673
of tithes, ii. 724

Consent of crown to corporation, iii. 8
rule, iii. 619

Consequential contempts, iv. 340
injury, iii. 365, 375

Conservators of the peace, ii. 641, 642; iv. 292

Consideration, executory, ii. 60
of a bill, ii. 125
of a contract, ii. 59
of a deed, i. 497
of a guarantee, ii. 105
of a note, ii. 125
of blood, ii. 61

Consideratum est per curiam, iii. 569

Consignee of goods, ii. 49, 84

Consignor of goods, ii. 49

Consistory court, iii. 305

Consolidated fund, ii. 57
regulations of Inns of Court, i. 20

Consolidation of parishes, iii. 50
Acts, ii. 412, n; iii. 9, n.

Consort, queen, ii. 444—448
the late prince, ii. 449

Conspiracy, iv. 238—241
action for, iii. 384
to murder, iv. 239

Constable, ii. 651
actions against, ii. 653, 654, n.; iii. 480, n.
appointment of, ii. 654
chief, ii. 652, n., 656
county, ii. *ib.*
exemptions from serving as, ii. 654
high, i. 126; ii. 652
lord high, ii. 615, n., 651, n.; iii. 335, n.
metropolitan, ii. 644, n.
parish, ii. 655
petty, ii. 652, 653
power as to arrest, iv. 346
special, ii. 657

Constabulary, county, ii. 656

Constitution, English, i. 32, 144; ii. 319, 465
of India, i. 113

Constitutions of Clarendon, iv. 497

Construction of contracts, ii. 63
of deeds, i. 499
of devises, i. 603
of royal grants, i. 620

Construction of statutes, i. 73
of wills, i. 603

Constructive contempts, iv. 341
total loss, ii. 133
treason, iv. 150

Contagious disease, iii. 174, 178, n.
among cattle, iii. 178, n.

Contempt against the royal palaces, iv. 186
against the sovereign's ecclesiastical supremacy, iv. 185
against his title, iv. *ib.*
in chancery, iii. 602
of court, iii. 261, 316, 602; iv. 340

Contempts, miscellaneous, iv. 199, 200

Contenement, iv. 446, n.

Contentious ecclesiastical jurisdiction, iii. 309, n.
probate or administration, ii. 193, n.

Contiguous benefices, ii. 692

Contingency with a double aspect, i. 328

Contingent interests, alienation of, i. 472
legacy, ii. 207
remainder, i. 326—334
uses, i. 364, 365

Continual claim, i. 509

Continuance, pleas, puis darreign, iii. 508, 509

Continuances, iii. 508, n.

Continuing actions, iii. 369
considerations, ii. 60

Contract and tort, iii. 313
actions on, iii. 429
as to land, iii. 461
breach of, iii. 429
by an agent, ii. 65
by deed, i. 482; ii. 54
by infant, ii. 62, 307
by lunatic, ii. 62
by married woman, ii. 63, 268
by one drunk, ii. 63
by persons under duress, ii. *ib.*
by way of charter-party, ii. 140
capacity of persons to, ii. 62

Contract, concurrent, or continuing, ii. 60
condition precedent in, ii. 64
consideration for, ii. 60
construction of, ii. 63
definition of, ii. 54, 55, n.
executed, ii. 58
executory, ii. *ib.*
express, ii. 57; iii. 429
heir's liability on, i. 433
illegal, ii. 64
implied, ii. 57; iii. 429
in market overt, ii. 72
merger of simple, in deed, i. 482
of bailment, ii. 80
of bills and notes, ii. 114
of bonds, ii. 108
of charter-parties, ii. 140
of guarantee, ii. 105
of insurance, ii. 127
of loan, ii. 90
of marriage, ii. 240
of partnership, ii. 99
of sale, ii. 68
of the loan of money, ii. 90
parol, ii. 55
secured by penalty, ii. 111
simple, ii. 55; iii. 476
social, i. 29
specialty, ii. 54
stamps on, ii. 62, n.
verbal, ii. 55
warranty on, ii. 76
with alien enemy, ii. 409, n.
written, ii. 55

Contradiction of witness, iii. 429

Contribution from co-surety, ii. 107
to common union fund, iii. 51, n.
to general average, ii. 134

Contributories, iii. 24

Contributory boroughs, ii. 334, n.

Control, Board of, i. 111, 113

Contumace capiendo, writ of, iii. 317, n.

Contumacious and in contempt, sentence of being, iii. 317

Conusance, claim of, iii. 300, n.; iv. 326

Convening parliament, ii. 322

Conventicle Act, ii. 707

Convention of peers, ii. 456
parliament, the, ii. *ib.*

Conventions as to the extradition of criminals, iv. 348, n.
as to the fisheries, iii. 167

Conversion, fraudulent, iv. 131
of goods, iii. 425

Conveyances, i. 161, 467—480
Act to facilitate, i. 694
at common law, i. 502
by aliens, i. 477
by attainted persons, i. 473
by corporations, i. *ib.*
by idiots, i. 474, 475
by infants, i. 476
by lunatics, i. 474, 475
by married women, i. 476, 557
by matter of record, i. 503, 615
by statute law, i. 503
by tenant in tail, i. 557
by the crown, i. 618
by water, iii. 187—190
in pais, i. 503
of copyholds, i. 632, 641
of voters to the poll, ii. 377
origin of, i. 160
practice in preparing, i. 485, n.
public, iii. 180—190
to defeat creditors, ii. 170
to uses to bar dower, i. 275
under the statute of uses, i. 529

Conveyancing, system of, i. 507

Convict prisons, directors of, iii. 126

Conviction, iv. 435
becoming mad after, iv. 27
forfeiture on, iv. 459
former, iv. 451
summary, iv. 329—348

Convicts, sentenced to penal servitude, iv. 449
tickets of leave to, iv. 451, n.
where confined, iii. 125—127

Convocation, ii. 525, 668
legislative power of, ii. 526, n.

Co-ownership, in goods, ii. 14

Coparceners, i. 346, 347

Co-partnership, ii. 101

Copies, copyright in, ii. 41

Copper coin, iv. 192
mines, ii. 549

Copy of depositions, right to, iv. 358, 420
of indictment, iv. 420
proof by, iii. 543

Copyhold, i. 188, 214, 219, 624—646
Acts, i. 643
admittance to, i. 635—640
alienation of, i. 632
assets, i. 631
commissioners, i. 643
commutation of fines, &c., i. *ib.*
conveyance of, i. 632, 640
descent in, i. 221, 627, n., 632
devise of, i. 639, 640
dower in, i. 627
equitable interests in, i. 641
enfranchisement of, i. 221, 632
estate, vote for, ii. 353
estate tail in, i. 636
execution against, i. 632
extinguishment of, i. 220, 221, n., 638
fines, heriots, &c., in, i. 221, 628
forfeiture of, i. 222, 628
for life or years, i. 625
freebench in, i. 627
land, execution on, iii. 587
liability of, to debts, i. 631
licence to demise, i. 633
mortgage of, i. 637
of inheritance, i. 221, 625
partition of, i. 344, n.
quit rents in, i. 628, 676
rents of assize in, i. 676
surrender of, i. 634, 645
title to, i. 633
waste, i. 628

Copyholders, formerly villeins, i. 218

Copyright, ii. 9, 34
Acts, ii. 36, 41
assignment of, ii. 38
at common law, ii. 34
by statute, ii. *ib.*
duration of, ii. 36
foreigners may acquire, ii. 34, n.

Copyright, in periodical works, ii. 36, n.
international, ii. 41
in the colonies, ii. 37, n.
is personal property, ii. *ib.*
registration of, ii. 37
remedies for infringement of, ii. 38; iii. 429

Corn, adulteration of, iv. 269
may be distrained, iii. 250
stacks of, firing, iv. 103

Cornage, tenure by, i. 201

Cornwall, duke of, ii. 451
mines in, ii. 550, n.

Corodies, i. 648, 649, n.; ii. 531, n.; 670, n.

Coronation, by whom performed, ii. 670
oath, i. 89; ii. 397

Coroner, ii. 634
court of the, iv. 323
deputy, ii. 637
duties of, ii. *ib.*
for a district, ii. *ib.*
local jurisdiction of, ii. 637
removal of, ii. 636
remuneration of, ii. *ib.*

Coroner's inquest, ii. 681; iv. 360
on body of criminal, ii. 638
power to bail, iv. 357, n.

Corporate body—see BODY CORPORATE.
counties, i. 133
name, iii. 11

Corporation, i. 124, 358, 454
aggregate, i. 358; iii. 4, 11
alienation by, i. 473, 474; iii. 17
bond to, iii. 16
by prescription, iii. 8
civil, iii. 6
disabilities of, iii. 13
ecclesiastical, iii. 5
eleemosynary, iii. 6, 7
how created, iii. 8
how dissolved, iii. 29
how sued, iii. 11
how visited, iii. 8, 25
in the universities, iii. 6
incidents of a, iii. 11—17
lay, iii. 5

Corporation, municipal, i. 124, 474; iii. 31—41
name of, iii. 11
nature of a, iii. 2, 3
officers, iii. 12
of London, iii. 30
origin of, iii. 3
purchase by a, i. 473
qualified, iii. 19
sole, i. 358; iii. 4

Corporations, erection of, ii. 515

Corporeal hereditaments, i. 170

Corpus juris canonici, i. 65
civilis, i. 64

Correction, house of, iii. 122
of apprentice, ii. 282, n.
of servant, ii. *ib.*
of wife, ii. 263

Corrupt perjury, iv. 243
Practices Municipal Election Act (1872), iii. 35, n., 334
Practices Prevention Act (1854), ii. 375

Corruption of blood, i. 443; iv. 164, n., 454

Corse present, ii. 742

Corsned, ordeal by, iv. 410

Cost of relief of pauper, iii. 62, n.

Costs, iii. 574, 608
at discretion of court, iii. 577
disallowance of, in certain cases, iii. 576
double, iii. 574, n., 617
enactments as to, iii. 575
from executors, iii. 575, n.
in dower, iii. 608
in election petitions, ii. 379
in frivolous actions, iii. 576
in mandamus, iii. 633, n.
in quare impedit, iii. 612, 613
in replevin, iii. 617
of particular issues, iii. 575
of prosecution, iv. 435, 436
on appeal, iii. 580
on petition of right, iii. 658
on proceedings before a magistrate, iv. 337
taxing, iii. 566, 574, n.
to defendant, iii. 575
to and from the crown, ii. 475; iii. 658, 670, n.
treble, iii. 574, n.

Co-surety, ii. 107

Couchant, iii. 249

Council, borough, iii. 35—37
equitable, ii. 228
great, of the realm, ii. 319
lord president of the, ii. 458, 615, n.
of Governor General in India, i. 112
of India, i. 114
of judges, iii. 480, n.
of the senate, iii. 6, n.
privy, ii. 457
royal, ii. 455—463

Councillors, municipal, iii. 35
of crown, ii. 455
privy, ii. 457—see PRIVY COUNCIL.

Counsel, i. 17, 18; iii. 272—277
cannot sue for fees, iii. 275
for prisoners, iv. 424, 430
freedom of speech of, iii. 275
privileges of, iii. 276, 277

Count, common, iii. 432, n.
in a declaration, iii. 509, n.
in dower, iii. 606, n.
(or comes), i. 126; ii. 603

Counter claim, iii. 503

Counterfeiting the coin, iv. 151, n., 189
the great seal, iv. 151, n., 143

Counterpart, i. 483

Counties, i. 126
corporate, i. 133; iv. 366
divisions in, ii. 656
elections for, ii. 370
electors for, ii. 351—356
members for, ii. 333, n.
palatine, i. 129, 652
representation of, ii. 351, 370

Countors, i. 17, n.

Countries subject to laws of England, i. 83

Country causes, iii. 517
putting one's self on the, iv. 391, n.
trial by—see JURY, TRIAL BY.

County bridges, iii. 129, 131
constabulary, ii. 656

County coroners, ii. 636
corporate, i. 133; iv. 366
court Acts, iii. 285, n.
district, iii. 283—292, 421
imprisonment by, iii. 289, n.
judges, iii. 285
jurisdiction as to legacy, ii. 213, n.; iii. 287, n.
in admiralty, iii. 291
in bankruptcy, ii. 147; iii. 292
in charities, iii. 75
in disputes between husband and wife as to property, iii. 83
in equity, iii. 290
(miscellaneous), iii. 292, n.
of the sheriff, i, 127; ii. 628; iii. 282; iv. 489, 491
probate in, ii. 193, n.
courts, i. 127, 296
Juries Act (1825), iii. 516
lunatic asylums, iii. 112
members, i. 128
of a town, i. 133
palatine, i. 129, 652; iii. 347
qualifications, ii. 351—356
quarter sessions, iv. 317
rate, i. 129; iii. 68, n.

Coursing match, iv. 275, n.

Courtesy, titles by, ii. 615

Court, archdeacon's, iii. 305
bail, iii. 331, n.
barmote, iii. 348, n.
baron, i. 215; iii. 279; iv. 486
central criminal, iv. 308, n., 312, 316
christian, i. 67—see ECCLESIASTICAL COURTS.
consistory, iii. 305
county—see COUNTY COURT.
customary, i. 220
ecclesiastical, i. 69; ii. 178; iii. 302—317
high, of justice, iii. 347—355
hundred, iii. 281
leet, iv. 321, 486
lord mayor's, iii. 293, n.
martial, ii. 590

Court, military, iii. 335, n.
of admiralty, i. 67; iii. 341—346; iv. 311
of appeal, iii. 355—357
of appeal in chancery, iii. 331
of arches, iii. 306
of bankruptcy, ii. 147; iii. 346—see BANKRUPTCY.
of chancery, iii. 320—331
of chivalry, iii. 335, n.
of common pleas, iii. 333, 334; iv. 499
of criminal appeal, iv. 442
of delegates, iii. 307, 345
of divorce, ii. 239, 279; iii. 346
of exchequer, iii. 334
chamber, iii. 333
of gaol delivery, iv. 313
of general sessions, iv. 317
of great sessions in Wales, i. 85; iii. 317, n.
of high commission, iii. 309, n.
of hustings, iii. 293, n.
of inquiry, ii. 590, n.
of judicature, supreme, iii. 318—357
of justice, iii. 278
of King's Bench—see QUEEN'S BENCH.
of lord high steward, iv. 302, 325
of orphans, ii. 313
of oyer and terminer, iv. 313
of parliament, iv. 299
of peculiars, iii. 306
of piedpoudre, iii. 317, n.; iv. 323
of policies of insurance, iii. 317, n.
of probate, ii. 185, 213; iii. 346
of quarter sessions, iv. 317
of queen's bench, iii. 331—333; iv. 307
of requests, iii. 324
of sheriff, iii. 282
of Star Chamber, iv. 309
of the clerk of the market, iv. 323
of the coroner, iv. *ib.*
of the duchy chamber of Lancaster, iii. 347, n.
of the lord steward of the household, iv. 325
of the marshalsea, iii. 317, n.; iv. 325
Court of the sheriff of London, iii. 293, n.
of the sheriff's tourn, iv. 321
of wards and liveries, i. 192
palace, iii. 317, n.
payment into, iii. 383, 505
prerogative, iii. 205, n.
prize, ii. 18
roll, tenant by copy of, i. 219
stannaries, iii. 298

Courts at Westminster, iii. 340.
authority to erect, ii. 505
borough, iii. 293
christian, iii. 304—see ECCLESIASTICAL COURTS.
forest, iii. 317, n.
in general, iii. 267—277
inferior, iii. 269, 278—317
local, iii. 292
London, iii. 292, n.
maritime, iii. 341
nisi prius, iii. 349, 484; iv. 314
not of record, iii. 269
of assize, iii. 340, 484
of commissioners of sewers, iii. 296
of conscience, iii. 284
of criminal jurisdiction, iv. 298—328
of justice, independence of, ii. 473
of record, iii. 269, 281, 292
of request, iii. 284
of special jurisdiction, iv. 324
of the Cinque Ports, iii. 347, n.
of the counties palatine, i. 130, 131; iii. 347
profits from, ii. 538
Saxon, iii. 302
spiritual, iii. 302—317.
superior, iii. 269, 318
university, i. 67; iii. 299; iv. 325
voluntary, iii. 309, n.

Cousins, marriage between first, ii. 243
where peers are so styled by the king, ii. 603

Covenant, ii. 54
action of, iii. 363
as to title, iii. 430
in a conveyance, i. 490
lease, i. 514; iii. 430
running with land, i. 409, 515

Covenant, to stand seised, i. 361, 532, 533
writ of, in a fine, i. 560

Coventry Act, iv. 80, n.

Covert pound, iii. 255

Coverture, ii. 263—see MARRIAGE.
effect of, ii. 263—272
no excuse in treason, iv. 33

Craven, iv. 413

Credibility of witness, iii. 533, 534, 538

Creditor, administration to, ii. 195
arrangements with, ii. 176
opposition of, to bankrupt, ii. 162
proof of, in bankruptcy, ii. 157
protection of, from fraudulent sales, ii. 52
simple contract, i. 433
specialty, i. 436

Creditors' trustees, ii. 156

Crepusculum, iv. 105

Crime, iv. 1
against nature, iv. 92
committed by the sovereign, iv. 36
definition of, iv. 4
distinguished from civil injury, i. 138
homicide to prevent, iv. 50, 52, n.
who can commit, iv. 21.

Crimen falsi, iv. 141

Criminal appeal, iv. 442
conversation, action for, iii. 437
courts, iv. 298—328
information, iv. 373 – 378
lunatics, iii. 116
Law Amendment Act (1872), ii. 229, n.
Law Consolidation Acts, iv. 297

Croke's Reports, i. 50, n.

Cross appeal, iii. 581, n.
bill, iii. 598, 600
examination, iii. 538
remainders, i. 354
sign of, in deeds, i. 493

Crossed cheque, ii. 117, n.

Croupier of gaming-houses, iv. 273

Crown—see KING.
cases reserved, iv. 442
costs, iii. 662
debts, iii. *ib.*
ecclesiastical supremacy of the, ii. 704
grants, i. 447
hereditary title to, i. 405, 424; ii. 414—443
injuries proceeding from the, iii. 654
affecting the, iii. 658
jewels, ii. 223, n.
lands, ii. 534
leases, ii. 535
limitation of suits by the, iii. 469, 479
office, iii. 332; iv. 307
assistant mastership of, iv. 307, n.
master of, iv. 374
prerogative of the, ii. 464—527
private estates of the, ii. 536
property, rating, iii. 64, n.
sale of, ii. 73
revenue of, ii. 528—581
settlement of the, ii. 441
suits against and by, iii. 669

Cruelty to animals, iv. 283

Crying down coin, ii. 524

Cubit, ii. 517

Cucking-stool, iv. 277

Cujus est solum, ejus est usque ad cœlum, i. 169

Culprit, derivation of the word, iv. 406, n.

Cultivated plants, malicious injuries to, iv. 140
stealing, iv. 122, n.

Cum causâ, habeas corpus, iii. 643, n.
testamento annexo, administration, ii. 196, 198, n.

Curate, ii. 695
licence to, ii. *ib.*
perpetual, ii. 682, n.
stipend of, ii. 695.

Curator, ii. 308, n.

Curfew, iv. 495

Curialitas, i. 264, n.

Current coin, iv. 188, 523, 524

Cursing and swearing, iv. 209

Curtesy, tenant by the, i. 263, 377

Curtilage, burglary within the, iv. 106

Custodia legis, goods in, ii. 11

Custody of child, ii. 295
of idiots and lunatics, ii. 508—514; iii. 322
of infants, ii. 295
of temporalities of bishoprics, ii. 530; iv. 496

Custom, i. 40, 45, 46, 53
dower by, i. 267
guardianship by, ii. 313
heriots by, i. 629, 631
of borough English, i. 54, 56, 211
of gavelkind, i. 54, 56, 218
of merchants, i. 55
particular, i. 53
rules as to validity of a, i. 57—61
trial of a, i. 56

Customary court of copyholders, i. 220, 633
freehold, i. 223, 225, 640, n.
services, iii. 410
tenure, i. 223

Customs Acts, ii. 363; iii. 145
offences against the, iv. 329
of London, i. 56; ii. 212; iii. 379, n.
the, ii. 560

Custos morum, the Queen's Bench as the, iv. 377
rotulorum, ii. 642

Custuma antiqua sive magna, ii. 560
parva et nova, ii. *ib.*

Cutpurse, iv. 125

Cygnets, ii. 23

Cy-près, doctrine of, iii. 80

D.

Damage feasant, iii. 246, 249, 251, 252, 254, 400
to things personal, iii. 420—429

Damages, action for, iii. 359
assessed by jury, ii. 99; iii. 570
claim for, ii. 143
for adultery, iii. 438
in dower, iii. 608
in quare impedit, iii. 612
liquidated, ii. 110
nominal, iii. 367
on breach of bond, ii. 110
or penalty, ii. 112

Damnum absque injuriâ, iii. 368, 379, 402, n., 404

Dane-Lage, i. 42; iv. 487

Dangerous animals, iii. 375
arms, iv. 257
goods, carriage of, ii. 86
trades, iv. 275

Darreign continuance, plea puis, iii. 508, 509
presentment, assize of, iii. 415, n., 484

Dartmoor, convicts at, iii. 126, n.

Date of a deed, i. 409

Daughter, homicide in defence of, iv. 51
seduction of, iii. 442

Day, computation of a, i. 283

Days of grace, ii. 117, n., 133
of public fast or thanksgiving, &c., ii. 119, n.

Deacon, ii. 660
age for being ordained, ii. *ib.*

Deacon's orders, ii. 684

Dead bodies, refusing to bury, iv. 285
taking up, iv. 284
game, property in, ii. 19
man's part, ii. 212, n.

Deaf and dumb, trial of one, iv. 393, n.

Dean and chapter, ii. 674
how appointed, ii. 675
of the arches, iii. 306
rural, i. 177; ii. 676

Dean, forest of, ii. 549, n.

Deaneries, suppression of, ii. 750

Deanery, ii. 675

Death, civil, i. 141, 256
by negligence, action for, iii. 370
of parties, pending action, iii. 592
sentence of, iv. 453—see CAPITAL PUNISHMENT.

Deaths, registration of, ii. 251; iii. 236

De bono et malo, writ, iv. 315

Debt, ii. 142
action of, iii. 363, 431
due from ambassador, ii. 487
information of, iii. 669
national, ii. 574

Debtor absconding, iii. 497, n.
and creditor arrangements, ii. 176
liability of, to arrest—see ARREST.

Debtors Act (1869), ii. 148, n., 159, 342, n., 629; iii. 289, n., 436, n., 497, 572, n., 632, n.

Debts, corporation, iii. 38
how paid, ii. 157, 171—174
in bankruptcy, proof of, ii. 157, 160, n.
judgment, ii. 144; iii. 574
liability of heir on, i. 432
of record, ii. 143
on simple contract, i. 433; ii. 143, 203; iii. 476
payment of, by executor or administrator, ii. 203
proved in bankruptcy, dividend on, ii. 171
small, iii. 283
specialty, i. 432; ii. 143; iii. 478

Decanus, ii. 674

Deceased body, dissection of, iii. 214

Deceit, writ of, i. 640, n.; iii. 577, n.

Decem tales, iii. 528

Decennaries, i. 124; iv. 290

Decimæ, ii. 532

Declaration against interest, iii. 544
against transubstantiation, ii. 707

Declaration before a magistrate, iii. 628, n.
dying, iv. 429
in an action, iii. 500, n.
in ejectment, iii. 618
in lieu of oath, iii. 315, n., 529, n., 535; iv. 242, n.
in trover, iii. 452
of bankrupt, ii. 158
of legitimacy, ii. 239, 281, n.
of right as a natural-born subject, ii. 239
of Title Act, i. 694, 698
of trusts, i. 374
of validity of marriages, ii. 239
on taking office, ii. 622
voluntary, iii. 628, n.

Declaratory part of a law, i. 35
statutes, i. 70

Declaring uses of fine or recovery, i. 573

Declinatory pleas, iv. 397, n.

De contumace capiendo, iii. 317

Decoying children, iv. 93

Decree, iii. 557
final, iii. 601
in equity, iii. *ib.*
interlocutory, iii. *ib.*
nisi for divorce, ii. 281

Decretal order, iii. 599

Decretals, i. 65

Decretum Gratiani, i. 64

Decrying the coin, ii. 524

Dedication, highways by, iii. 130

Dedimus potestatem, writ of, i. 561; ii. 645, 647

De donis, statute, i. 242, 243, 247, 318, 558, 566, 626, 681

Deed, Acts for shortening language of, i. 485, n.
ambiguity in, i. 499
attestation of, i. 495
avoidance of, i. 497
by a debtor, with his creditors, ii. 176
cancelling of, i. 497
conclusion of, i. 491
condition in, i. 488

Deed, consideration of, i. 497
construction of, i. 499
counterpart of, i. 483.
covenants in, i. 490
date of, i. 491
definition of, i. 481
delivery of, i. 494
discharge of, i. 499
execution of, i. 494
forging, iv. 147
habendum in, i. 486
inconsistent clauses in, i. 501
indented, i. 482
in general, i. 481
inter partes, i. 485
must be written or printed, i. 484
of partition, i. 516
of release, i. 518, 527, 537
original and counterpart of, i. 483.
or escrow, i. 495
poll, i. 483
premises in a, i. 485
reading of, i. 491
recitals in, i. 486
reddendum in, i. 487
registration of, i. 614
release of, i. 499
requisites of, i. 483
sealing of, i. 492
signing of, i. *ib.*
stamps on, i. 484
stealing, iv. 115, 122, n.
tenendum in, i. 487
to declare or lead uses of fine or recovery, i. 573
voluntary, i. 497
warranty in, i. 488
where requisite, i. 481
without consideration, i. 498, n.
witnesses to a, i. 495

De ejectione firmæ, iii. 398

Deer, property in, ii. 5, 6, n.
stealing, iv. 121, n., 331

De estoveriis habendis, writ, ii. 278, n.

De excommunicato capiendo, writ, iii. 316

Defacing coin, iv. 193
public works of art, iv. 140

Defamation, iii. 377—383
ecclesiastical suits for, iii. 310, n.

Defamatory libels, iii. 381; iv. 258
words, iii. 377

Default, judgment by, iii. 506, 567, 569

Defeasance, deed of, i. 526

Defect of understanding, iv. 23

Defectum, challenge propter, iii. 524; iv. 421

Defence, dilatory, iii. 502
equitable, iii. 504, n.
of action on bill or note, ii. 118, n.
of self, of children, &c., iii. 241; iv. 57
peremptory, iii. 502

Defendant in an action, iii. 491—498
in ejectment, iii. 619
in quare impedit, iii. 418
quitting England, iii. 497
service on, iii. 494

Deferred annuities, iii. 84

Defilement of children, iv. 91
of women, iv. 84

Definitive sentence of spiritual court, iii. 315

Deforcement, ouster by, iii. 387

Deforciant, i. 561; iii. 391

De frangentibus prisonam, statute, iv. 229

Degrees in the universities, ii. 708
of commonalty, ii. 602—618
of consanguinity, ii. 194, 242
of Lambeth, ii. 670, n.
of nobility, ii. 601—612

De hæretico comburendo, writ, ii. 705, n.; iv. 204, 205, n., 515

De homine replegiando, writ, iii. 643, n.

De idiotâ inquirendo, writ, ii. 509, 511

De la plus belle, dower, i. 270

Del credere commission, ii. 78

Delegates, court of, iii. 307, 345

Delegation of judge's power in bankruptcy, ii. 155, n.

Delegatus non potest delegare, ii. 68

Delictum, challenge propter, iii. 526; iv. 421

Deliverance, second, writ of, iii. 616

Delivery of a deed, i. 494

Delivery of possession of chattel, ii. 50
of signed bill by attorney, iii. 218
of statement of complaint, iii. 500

De lunatico inquirendo, writ, ii. 511

Delusions, insane, iv. 28.

Demand, bill payable on or after, ii. 117, n., 121
of money with menaces, iv. 128, 129

De medietate, jury, iii. 522, n.; iv. 327 421

De mercatoribus, statute, i. 309

Demesne lands, i. 214
of the crown, ii. 534
seisin in, i. 233

Demise, i. 509, 512—see LEASE.
of the crown, ii. 392, 426, 478, 623
shall not dissolve parliament, ii. 393

Demi-vills, i. 125

Democracy, i. 31

Demolishing buildings, &c., riotously, iv. 250

Demurrage, ii. 141

Demurrer, iii. 501
argument of, iii. 511
book, iii. *ib.*
general, iii. 501, n.
in equity, iii. 597
joinder in, iii. 508
judgment on, iii. 511, 563; iv. 399
special, iii. 501, n., 563
to an indictment or information, iv. 399
to evidence, iii. 547

Denial of Christianity, iv. 201, 203

Denison's Act, iii. 108, n.

Denizen, ii. 410

Denmark, convention with, iv. 348, n.

Dentists, iii. 213, n.

De odio et atiâ, writ, iii. 642, n.

Deodand, abolished, ii. 552
law of, ii. 551, 552, n.

Departure from realm by debtor, ii. 152, 161
in pleading, iii. 507

Depasturing, injury by, iii. 411

Dependencies, colonial, i. 101

Deposit in bank by married women, iii. 83
of title deeds, i. 305, n.

Deposition, of witnesses, iii. 532, 600; iv. 354, 420
right to copy of, iv. 358

Depositum, ii. 81, n.

De prærogativâ regis, statute, ii. 509, 540

Deprivation of archbishops and bishops, ii. 673
of a beneficed clergyman, ii. 693
sentence of, iii. 315

Deptford Strond, Trinity House of, iii. 156

Deputy cannot depute, ii. 68
coroner, ii. 637
county court judge, iii. 285, n.
recorder, iii. 87, n.; iv. 320, n.
sheriff, ii. 632

De rationabili bonorum parte, writ, ii. 179, 210

Derby, Earls of, i. 100; ii. 461

Dereliction, lands gained by, i. 462
of property, i. 160

De retorno habendo, writ, iii. 616

Derivative or primary conveyances, i. 517
settlement, iii. 52

Descent, i. 161, 232, 388
as if from the purchaser, i. 426, 427, 431, 437
between brothers, i. 419, 445
breaking the, i. 430
by particular custom, i. 389
canons of, i. 391—430
cast, iii. 391, 394
founded originally on the common law, i. 393
from the purchaser, i. 391
half blood in, i. 421—425
in copyholds, i. 221, 625, 632
in feuds, i. 179

Descent, Inheritance Act, i. 390
of English kings, ii. 414—448
origin of, i. 161
or purchase, i. 386
paternal line preferred, i. 413—417
per capita, i. 407
per stirpes, i. *ib.*
preference of males, i. 402
rules of, prior to 1st Jan. 1834, i. 391, n.
since 1st Jan. 1834, i. 391—425
special cases of, i. 425
Tables of, i. 391, 427
traced from person last entitled, as if he had been the purchaser, when, i. 426, 427
traced on failure of male paternal line, how, i. 416
traced to lineal ancestry, i. 409

Desertion from the army, ii. 591; iv. 196
from the navy, ii. 596, n.; iv. 196
of family, ii. 267, n.; iii. 57, 61, n.
of wife, ii. 267

Designs, copyright in, ii. 41

De son tort, executor, ii. 199, 200

Destitute wayfarers, &c., relief of, iii. 51, n.

Detached parts of counties, i. 127, n.

Detainer, forcible, iv. 256
of the freehold, iii. 387
of the person, iii. 384
unlawful, iii. 423

Determination of estates at will, i. 290

Detinue, action of, iii. 363, 364, 582
execution in, iii. 582

Devastavit, ii. 201

De ventre inspiciendo, writ, ii. 287

Deviation from voyage, ii. 132

Devise [and see WILL], i. 588, 614
attestation of, i. 596—599
by married women, i. 595, n.
by virtue of a power, i. 608
construction of, i. 601—610
conveyance by, i. 588
executory, i. 612
general, i. 238
in nature of a declaration of uses, i. 611

Devise, lapsed, i. 606
meaning of "dying without issue" in, i. 609
must be in writing, i. 596, 598
of a fee without words of inheritance, i. 602, 604
of "all my lands and tenements," effect of, i. 607
of customary freeholds, i. 226, n.
operation of, i. 610
particular points of construction in, under new Will Act, i. 603, 610
power to, i. 591, 595
publication of, i. 596, 599
residuary, i. 607
revocation of, i. 596, 600
solemnity of, i. 595—601
speaks as at time of death, i. 604
subject to rule against perpetuities, i. 612
subscription of, i. 610
to a charitable use, i. 594
to heir, i. 400
to trustees, construction of, as to the estates they take, i. 605
to uses, i. 592

Devisee, liability of, for debts, i. 433

Devon, mines in, ii. 550, n.

Dice, iv. 272

Diem clausit extremum, iii. 668

Dies fasti et nefasti, iii. 482

Digests of Justinian, i. 62

Dignities, i. 648, 649, n.; ii. 601—618
descent of, among females, i. 406

Dignity, imperial, ii. 476

Dilapidations, ii. 713; iii. 313, 408

Dilatory pleas, iii. 502; iv. 400

Diocesan courts, ii. 672

Diocese, i. 116

Diplomatic pensions, ii. 485, n.
relations with Rome, ii. 485, n.; iv. 182, n.

Direct contempts, iv. 339
evidence, iii. 541
prerogative, ii. 475

Directors, iii. 19, n.
frauds by, iv. 133

Directors, liability of, iii. 19, n.
of convict prisons, iii. 126

Directory part of law, i. 36

Disabilities, canonical, ii. 240
civil, ii. 241
of clergymen, ii. 663
of infants, ii. 803; iv. 23—25

Disability, rights of persons under, iii. 471, 476, 479

Disabling statutes, i. 71; ii. 735

Disafforestment, i. 667

Disappropriations, ii. 679

Discharge of bankrupt, ii. 155, 161
of deed, i. 499
of jury, iii. 550, 553; iv. 433
of surety, ii. 106
opposition to bankrupt's, ii. 162
order of, ii. 161
pleas in, iii. 503

Discharged Prisoners' Aid Society, iii. 91, n.; iv. 447, n.

Disclaimer of a use, i. 367, n.
of estate, i. 477, 480
of patent, ii. 34
of tenure, i. 465

Discontinuance of action, iii. 568
of estate tail, i. 243, n., 464, n., 501, n.
ouster by, iii. 388

Discovery by bankrupt, ii. 158
in equity, iii. 598
interrogatories to force, iii. 582, 598
of accomplices, iv. 395
of debts due to judgment debtor, iii. 580
of trusts for papists, iii. 419

Discretion, age of, iv. 23

Diseases Prevention Act (1855), iii. 174; iv. 277

Disfranchised boroughs, ii. 334, n., 381

Dishonour, notice of, ii. 119, n., 120

Disinheriting children, ii. 289

Disorderly conduct, iv. 287
houses, iv. 214
persons, iv. 287

Disparagement of ward, i. 193

Dispensation by archbishop, ii. 670
in pharmacy, iii. 207, n.
to hold two livings, ii. 692

Dispensing with laws, ii. 472

Displacement of reversion, i. 317, 510

Dispunishable for waste, i. 257

Dissection after execution, iii. 214; iv. 75
of dead bodies, iii. 214

Disseisin, i. 314, 510; iii. 386

Dissenters, ii. 706
marriage of, ii. 250
relief of, ii. 706—708; iii. 80

Dissenting meeting-houses, iii. 80
ministers, ii. 707

Dissolution of corporation, iii. 29
of marriage, ii. 280
of monasteries, ii. 679
of parliament, ii. 392
of partnership, ii. 104

Distrained goods, rescue of, iii. 254

Distraining, iii. 245

Distress, i. 674, 680; iii. 245—257
damage feasant, iii. 245, 246, 249, 251, 252, 254
excessive, iii. 253
exemptions from, iii. 247—251
for rent, iii. 245, 256, 409
for services, iii. 245
illegal, iii. 257
impounding, iii. 254
infinite, iii. 254, n.
of cattle trespassing, iii. 246
of fixtures, iii. 250
of lodger's goods, iii. 248
of stranger's goods, iii. *ib.*
sale of, iii. 256
under Acts of Parliament, iii. 247, n.
warrant of, iv. 337
what may be taken in, iii. 247
where it lies, iii. 245

Distribution of residuum, ii. 208—212

Distributions, statute of, ii. 209; iii. 83

District coroners, ii. 636
county courts, iii. 283—292, 421
courts of bankruptcy abolished, ii. 147, n.
ecclesiastical, i. 122
highway, iii. 136
parishes, ii. 751
registries, iii. 491, n.
for probate, ii. 192
schools for poor, iii. 93
surveyor of highways, iii. 134

Distringas in detinue, iii. 582
to compel appearance, iii. 495, n.

Disturbance, injury of, iii. 410
of common, iii. 411
of divine service, ii. 699; iv. 250
of franchise, iii. 411
of patronage, iii. 414, 610
of religious assemblies, iii. 414, n.
of tenure, iii. 414
of ways, iii. 413

Diversion of highway, iii. 136

Diversité des Courtes, iii. 327

Divesting reversion, i. 317, 518

Dividend in bankruptcy, ii. 171

Dividends in the funds, unclaimed, ii. 576, n.

Divine law, i. 23
right to the throne, ii. 414, 434, 443; iv. 512
service, tenure by, i. 227

Divisional courts of High Court of Justice, iii. 354, 514, n.

Divisions of counties, i. 127, n.; ii. 649

Divorce, ii. 239, 277—282; iv. 279
à mensâ et thoro, ii. 277
à vinculo, ii. 277
court of, ii. 239; iii. 275, n., 346, 438
effect of, on dower, i. 268
for adultery, ii. 278

Docks, larcenies from, iv. 124

Doctor and Student, the treatise of, i. 51

Doctors' Commons, iii. 306, n.

Doctrine of divine right, ii. 414, 434, 443; iv. 512
of relation in bankruptcy, ii. 167

Documents, inspection of, iii. 541

Doe, John, the fictitious plaintiff, iii. 618

Dog, injuries done by, iii. 376
licences, ii. 567
stealing, ii. 7, 8; iv. 122, n., 331
using for draught, iv. 283, n.

Doli capax, infant, iv. 23

Dom-boc of Alfred, i. 41; iv. 485

Domesday Book, i. 182

Domestic servants, ii. 227, 231

Domicile of testator, ii. 189

Domitæ naturæ, animals, ii. 4, 5, 548

Don, grant, et render, fine sur, i. 563

Donatio mortis causâ, ii. 48

Donative advowsons, ii. 687

Donis, statute de, i. 242, 243, 247, 566, 626, 681

Don Pataleon Sa, ii. 487, n.

Dormant partner, ii. 102

Dos or dower, i. 267

Dos rationabilis, i. 277

Dotalitium, i. 267

Double costs, iii. 574, n., 617
insurance, ii. 130
possibility, i. 329
rent, i. 295
value, i. *ib.*
voucher, i. 569

Do, ut des, ii. 59, n.
ut facias, ii. *ib.*

Dover Castle, Constable of, ii. 499, n.
Harbour, ii. 501, n.

Dowager, Queen, ii. 449

Dower, i. 266—279; ii. 268, 274; iii. 280, 334, 361, 362, 397, 605
Act (3 & 4 Will. IV. c. 105), i. 276
action of, i. 272; iii. 605
ad ostium ecclesiæ, i. 270, 277.

Dower, arrears of, iii. 608
assignment of, i. 271
at common law, i. 270
by particular custom, i. *ib.*
changes in the law as to, i. 277
de la plus belle, i. 270
different species of, i. *ib.*
estates by, i. 266
ex assensu patris, i. 270
how a wife shall be endowed, i. *ib.*
how barred, i. 272
judgment in, iii. 608
meaning of, i. 266
of what wife is endowed, i. 269, 270, 379
unde nihil habet, iii. 397, 605
who may be endowed, i. 268
writ of right in, iii. 361, 605, n.

Draft, ii. 115
under 20*s.*, ii. 126, 127

Drainage districts, iii. 297, n.

Dramatic pieces, copyright in, ii. 40

Drawee of a bill, ii. 115

Drawer, ii. *ib.*

Drawing traitor to execution, iv. 164

Drawings, copyright in, ii. 41

Drivers of public carriages, iii. 182.

Driving, furious, iv. 282

Droit d'aubaine, ii. 409, n.
of admiralty, ii. 494

Droitural actions, ii. 390

Druggists, iii. 207, 213

Drugs, stupefying by, iv. 82

Druids, i. 40; iv. 483

Drunkenness, effect on a contract, ii. 63
no excuse for crime, iv. 29
offence of, iv. 281

Dublin Port Corporation, iii. 160

Duces tecum, iii. 531

Duchy court of Lancaster, iii. 347
of Lancaster, i. 129

Duel, trial by, iv. 411

Duelling, iv. 63, 252

Duke, ii. 583, 602

Duke of Exeter's daughter, iv. 392, n.

Dumb, ex visitatione Dei, iv. 393, n.

Dungeness, iii. 158

Duplex querela, iii. 417

Durante viduitate, estate, i. 255, 260

Duration of parliament, ii. 393, 394

Duress, contract under, ii. 63
of imprisonment, i. 140
per minas, i. 141; iv. 33

Durham, county palatine of, i. 129; iii. 347—349
university, iii. 76

Duty of children, ii. 296
of executor, ii. 200—213
of parents, ii. 288
on fire insurance, ii. 135, n.

Dyer's Reports, i. 50

Dying declarations, iv. 429
"without issue," words of, in a devise, i. 609, 612

Dwelling-house, breaking into, iv. 106, 109, 110
larceny in a, iv. 123
setting fire to, iv. 102

E.

Ealdormen, ii. 603

Earl, ii. *ib.*

Earldom by tenure, ii. 605, 606, n.

Earl Marshal, iii. 335, n.

Earmark on money, ii. 53, n.

Earnest of bargain, ii. 69

Ease, chapel of, ii. 745

Easements, i. 648, 691

East India Company, i. 110; iii. 147, n.
dissolution of, i. 114, n.

East Indian stock, iv. 45, n., 46, n.
trade, iii. 147, n.

East Indies, i. 110

Eaves droppers, iv. 276.

Ecclesiastical authorities, ii. 660—701
commissioners, ii. 748
corporations, iii. 5, 25

Ecclesiastical courts, i. 67; ii. 178, 238, 240; iii. 302—317
division of England, i. 116
dues, iii. 312
jurisdiction, ii. 668
leases, i. 474; ii. 734
Leasing Act (1842), ii. 737
(1858), ii. 738
offences, iii. 309, n.
persons, alienation by, i. 473; ii. 734
registration of baptisms, iii. 232
synods, ii. 525
Titles Act, iv. 186

Economy, laws of social, iii. 1

Edgar Atheling, i. 44; ii. 421

Edmund Ironside, ii. 421

Education commissions, iii. 100
committee, ii. 462
department, iii. 75, n., 93—97
of children, ii. 292, 293
parliamentary grants for, iii. 105
the laws relating to, iii. 92—111
under the poor law, iii. 107

Edward the Confessor, i. 43, 184; ii. 422; iv. 487
the first, reforms under, iv. 501

Edward the Outlaw, ii. 422

Effect of writ of extent, iii. 662

Egbert, king, ii. 420

Egyptians (or gypsies), iv. 288, n.

Ejectione firmæ, de, iii. 393

Ejectment, action of, i. 570, n.; iii. 362, 393, 396, 617
between landlord and tenant, iii. 625
under Judicature Act (1873), iii. 620, n.

Election auditors, ii. 377
bribery in, ii. 374—377
by ballot, ii. 371
committee, ii. 379, n.
guardianship by, ii. 310
how conducted, ii. 371

Election of bishops, ii. 666
of coroner, ii. 635
of members of parliament, ii. 369—378
of school boards, iii. 94
of Scotch and Irish peers, ii. 331.
petition, ii. 378
university, ii. 372

Elective drainage districts, iii. 297, n.
monarchy, ii. 415

Electors (or elisors), iii. 523, n.
in London, ii. 360, n.
qualification of, ii. 349—365
registration of, ii. 354, 362
who cannot be, ii. 364, 365

Electric telegraphs, iii. 185; iv. 140

Elects of College of Physicians, iii. 205, n.

Eleemosynary corporations, iii, 6, 7, 26

Elegit, estate by, i. 297, 310
sale of land under, iii. 587
writ of, iii. 586

Elementary Education Act (1870), ii. 293; iii. 92—97
public, iii. 93
schools, iii. 93—97, 106, n.

Elisors, iii. 523, n.

Elizabeth of York, ii. 430

Elizabeth, queen, iv. 511

Ellesmere, Lord, iii. 321, 327

Elopement and adultery, i. 268, 272; ii. 270

Ely, bishop of, i. 133
isle of, i. *ib.*

Embargo, ii. 507

Embezzlement, crime of, iv. 129
by agents, iv. 131
by clerks, iv. 129
by public officers, iv. 187
by servants, iv. 129
by trustees, iv. 132, 133
of public money, iv. 187
of royal stores, iv. 130, 188

Emblements, i. 258, 259, 288, 289; ii. 214—217

Embowelling traitor, iv. 165, n.

Embracery, iv. 226

Emigration of paupers, iii. 68, n.

Emperor, title and power of, ii. 476

Emphyteusis, i. 176, n.

Empson and Dudley, iv. 377

Enabling and disabling statutes, i. 71; ii. 734

Enactments as to court of chancery, iii. 329, n.

Enceinte, i. 331

Enchantment, iv. 210

Enclosure commissioners, i. 643, n.

Endangering railway passengers, iv. 95

End of punishment, iv. 13.

Endorsement of bill of exchange, ii. 116

Endowed schools, iii. 97—102
Act (1869), iii. 100
Act (1873), iii. *ib.*
commission, iii. 97

Endowment—see DOWER.
of new churches, ii. 726

Endowments, church, ii. 712

Enemies of the state, ii. 17, 491

Enfranchisement, compulsory, i. 645
of copyholds, i. 221, 632, 645
of slaves, i. 109
of villeins, i. 217

Engineers' certificates, iii. 190

Engines, setting dangerous, iv. 96

England, civil division of, i. 123
ecclesiastical division of, i. 116
population of, i. 134, n.
what it includes, i. 85

Englescherie, iv. 67

English constitution, i. 32, 144
laws, when in force in a colony, i. 102

Engravings, ii. 41

Engrossing, iv. 266, n.

Enlarger l'estate, release, i. 518

Enlarging or restraining statutes, i. 71

Enlistment of sailors, ii. 595, n.
of soldiers, ii. 589

Enrolment of annuities, ii. 94
of bargain and sale, i. 535

Entails, i. 241—253; iv. 502
after possibility of issue extinct, i. 262, 583
barred by common recovery, i. 274, 568
barred by fine, i. 249, 566
barred under 3 & 4 Will. IV. c. 74, i. 250, 575
do not merge in the fee, i. 318
effect of judgments on, i. 252
equitable, i. 581, 582
ex provisione viri, i. 573
female, i. 245
in copyhold, i. 626
in frankmarriage, i. 244, n.
in incorporeal hereditaments, i. 681
male, i. 245
none in chattels personal, ii. 12, n.
quasi, i. 450
special or general, i. 244
where the reversion is in the Crown, i. 573

Entering cause for trial, iii. 518

Entireties, tenants by, i. 342

Entry, iii. 253, 390
and feoffment, release by, i. 520
burglarious, iv. 108
by landlord, iii. 525, 624
forcible, iii. 244, 396, n., 399, n.; iv. 256
for trial, iii. 518
of heir, i. 430, 506
of judgment on record, iii. 566; iv. 443
of lessee, i. 513
of proceedings on record, iii. 615
on breach of condition, i. 301—304, 515
on breach of covenant in lease, i. 515
on lands, iii. 243, 253, 390
peaceable, iii. 243
right of, i. 510; iii. 394
writs of, iii. 390, n.

Epidemic disease, iii. 174

Episcopal and Capitular Estates Act, ii. 738
functions, during illness, ii. 673, n.

Equitable councils, ii. 228
dower, i. 270

Equitable debt in bankruptcy, ii. 154, n.
estates, i. 230, 308, 356
interest in personalty, ii. 15
jurisdiction of county court, iii. 290; iv. 521
mortgage, i. 305, n.
pleading, iii. 504, n., 506, n.
procedure, iii. 595–603
remedy for breach of an agreement, iii. 461
waste, i. 257, n.; iii. 407, 453

Equites aurati, ii. 614

Equity, i. 81, 371; iii. 446—465
as distinguished from law, iii. 322, 446–455
charge in, iii. 573, n.
follows the law, iii. 450
in court of law, i. 308
of a statute, i. 73; iii. 448
of redemption, i. 306
relief given by, iii. 456
side of Exchequer, iii. 339
subjects of jurisdiction in, iii. 455

Error, iii. 578; iv. 463
bail in, ii. 464; iii. 580, n.
in fact, iii. 578
in law, iii. *ib.*
in the Exchequer Chamber, iii. 333
in the House of Lords, iii. 333

Escape, iv. 227

Escheat, i. 161, 178, 200, 210, 222, 435; ii. 550; iv. 459
for felony or treason, i. 446
propter defectum sanguinis, i. 436
propter delictum tenentis, i. 442

Escheator of Munster, ii. 381, n.

Escrow, i. 495

Escuage, i. 201

Esquire, ii. 616
by investiture, ii. 617, n.

Essence of a contract, stipulations not of the, iii. 430

Essoign, casting an, iii. 606, n.

Estate at sufferance, i. 293
at will, i. 289
by elegit, i. 297, 310
by statute merchant, i. 309
by statute staple, i. 309

Estate by the curtesy, i. 263
committee, ii. 738
committee of lunatics, ii. 513
for life, i. 254
for years, i. 282
from year to year, i. 291
in antient demesne, i. 224
in common, i. 351
in coparcenary, i. 346
in dower, i. 266
in expectancy, i. 313
in fee simple, i. 233
in fee tail, i. 233, 241—see ENTAILS
in gage, i. 304
in joint tenancy, i. 339
in lands, i. 229
in mortgage, i. 304
in pledge, i. 304
in possession, i. 313
in remainder, i. 313, 319
in reversion, i. 314
in severalty, i. 338
in trust, i. 372
in vadio, i. 304
legal and equitable, i. 230, 309, 356
not of inheritance, i. 254
of inheritance, i. 229
on condition expressed, i. 297, 298
on condition implied, i. 297
particular, i. 315
personal, ii. 179
privity of, i. 519
pur autre vie, i. 254, 450
real and personal, i. 280
settled, i. 252, n., 257, 266
settlement by having an, iii. 54
tail ex provisione viri, i. 573
upon condition, i. 298

Estoppel, i. 482, n.; ii. 109; iii. 505, 507

Estovers, i. 256, 287; ii. 278, n.; iii. 406
common of, i. 654

Estrays, ii. 539, 548

Estreat of recognizance, ii. 143, n.

Estrepement, writ of, iii. 408, n.

Eton, college of, iii. 76, 97

Evidence, iii. 512, 531—548
Amendment Act (1851), iv. 224
(1853), iii. 534
(1869), iii. *ib.*
before lunacy commissioners, ii. 512, n.

Evidence, best, iii. 541
circumstantial, iii. 545
confined to point in issue, iii. 536, 541
demurrer to, iii. 547
documentary, iii. 531
for prisoner, iv. 430
hearsay, iii. 543; iv. 429
in chancery, iii. 598—600
in civil cases, iii. 531—548
in criminal cases, iv. 425—433
of a child, iii. 533, n.
of husband and wife, ii. 262; iii. 534; iv. 429
of interested persons, iii. 533
of parties, iii. 533, 534; iv. 428
parol, iii. 531
perpetuation of, iii. 463
positive, iii. 545
queen's, iv. 395
secondary, iii. 541
when none required, iii. 539

Eundo, morando et redeundo, arrest, iii. 277, n.

Examination before a magistrate, iv. 354
cross, iii. 538
in chief, iii. *ib.*
last, of bankrupt, ii. 158, n.
of apothecaries, iii. 206
of articled clerks, iii. 216
pending service, iii. 216, n.
of attornies, iii. 216
of bankrupt, ii. 158
adjournment of, ii. *ib.*
of College of Physicians, iii. 206
of surgeons, iii. 206, 212
of witnesses, iii. 532—548—see EVIDENCE.

Ex assensu patris, dower, i. 270

Exceptional prerogatives of Crown, ii. 475

Exceptions, bill of, iii. 546
to bill, iii. 598

Excessive damages, new trial for, iii. 539
distress, iii. 253

Exchange, bill of, ii. 114; iii. 484, 492, n.
loss of, iii. 542, n.
contract of, ii. 68
of lands, i. 263, 515, 656

Exchequer, ii. 529

Exchequer, bills, ii. 574
forgery of, iv. 144, n.
bonds, ii. 574
chamber, court of, iii. 333
court of, iii. 334
jurisdiction of, iii. 338
origin of, iii. 334
proceedings in error from, iii. 340
division of High Court of Justice, ii. 354
receipt of, iii. 339
usurpation of, iii. 338, n.
why so called, iii. 339.

Excise, ii. 565
hereditary, ii. 538
licence, ii. 567; iii. 194
for game, ii. 25, 567
to keep dogs, ii. 567
proceedings by the, iv. 329

Exclusion of papists from the throne, ii. 435

Excommunication, iii. 315
as for contempt, iii. 316

Excommunicato capiendo, writ de, iii. *ib.*

Ex contractu, actions, iii. 363

Excusable homicide, iv. 52

Excuses for crime, iv. 21

Ex delicto, actions, iii. 363

Executed consideration, ii. 60
contract, ii. 58

Execution for murder, iv. 478
in civil cases, iii. 583—594
in detinue, iii. 582
in ejectment, iii. 623
in fourteen days, iii. 566, n.
inquest after an, ii. 641
of criminal, iv. 74—76, 478
of deed, i. 495
of justice, homicide to further, iv. 49
of judgment, iii. 583
on bond, ii. 111
private, iv. 76
speedy, iii. 566, n., 570, n.
to obtain specific delivery, iii. 431
what may be taken in, iii. 583, 584
where valid against a purchaser, ii. 51.

Execution, writ of, from what time it binds, ii. 51

Executive and legislative powers, i. 81; ii. 318, 395

Executor, actions by and against, iii. 370
appointment of, ii. 190
costs against, iii. 575, n.
de son tort, ii. 199
enactments to protect, ii. 213; iii. 458
powers and duties of, ii. 200—213

Executory consideration, ii. 60
contract, ii. 58
devises, i. 612
trusts, i. 374
uses, i. 545, 546

Exemptions from distress, iii. 247—251
from serving on juries, iii. 527
from tithes, ii. 726
from tolls, iii. 140
of clergymen, ii. 662

Exhuming dead bodies, iv. 284

Exigent, iv. 383, 460

Exile, i. 148

Ex nudo pacto non oritur actio, ii. 59, 126

Ex officio information, iv. 874
oath, iii. 315, n.

Exoneration of lands of Crown debtor, iii. 666

Expectancy, estates in, i. 313

Expenditure of the United Kingdom, ii. 579

Expenses of prosecution, iv. 435
of witnesses, iii. 531, 532; iv. 436

Explosion, destroying houses by, iv. 139, n.
doing bodily harm by, iv. 81

Exportation of gunpowder and arms, ii. 502

Exports, duties of, ii. 560—565

Exposure of one infected with disease, iv. 271

Express colour, iii. 505, n.

Express contract, ii. 57
warranty, ii. 77

Expressum facit cessare tacitum, ii. 58

Ex provisione viri, estate tail, i. 573

Extent, effect of, iii. 665
in aid, iii. 667
in chief, iii. 652
writ of, iii. 662

Extinguishment of copyhold, i. 221, n., 638
of incorporeal hereditaments, i. 675, n., 692
of parol by specialty, ii. 58
release by way of, i. 520

Extorting valuables by threats, &c., iv. 128, 129

Extortion by officers, iv. 247
offences of, iv. 365, n.

Extradition Act (1870), iv. 348, n.
treaties, iv. *ib.*

Extraordinary revenue, ii. 529, 553

Extra-parochial places, i. 119; iii. 44, n.
tithes, ii. 531, n.

Extra quatuor maria, ii. 285

Extravagantes communes, i. 65
Johannis, i. *ib.*

Ex visitatione Dei, dumb, iv. 391

Eyre, justices in, iii. 349; iv. 497

F.

Faciendum et recipiendum, habeas ad, iii. 643, n.

Facio, ut des, ii. 59, n.
ut facias, ii. *ib.*

Fact, error in, iii. 578

Facto, king de, ii. 405, 428; iv. 152

Factories, iii. 178, n.

Factors, ii. 77; iv. 132
Acts, ii. 78

Faculty, right to a pew by, ii. 714

Failure of heirs of the purchaser, i. 426, 436
of issue of the purchaser, i 409

Fairs and markets, i. 663; ii. 72, 516; iii. 404, 411

Faith, articles of, ii. 702

Falkland Isles, Acts relating to, i. 105, n.

False character to servants, ii. 238; iv. 270
imprisonment, iii. 384; iv. 97
judgment, iii. 280, 578
lights, ii. 546
news, spreading, iv. 257
personation, iv. 146, 270
pretences, obtaining property by, iv. 146
prophecies, iv. 257
verdict, iii. 561, n.
weights and measures, iv. 265

Falsi crimen, iv. 141

Falsifying judgments, iv. 463
pedigrees, iv. 147
records, iv. 223

Family, royal, the, ii. 444—454

Farm (or feorme), i. 514

Farming by clergymen, ii. 663
leases by incumbents, ii. 737

Faro, gambling at, iv. 272

Faryndon Inn, iii. 272, n.

Favour, challenge to the, iii. 522

Fealty, i. 177, 246, 256, 626; ii. 400
subtraction of, iii. 409

Fear, putting in, iv. 124, 126, 128, 129

Fee, base, i. 239
farm rents, i. 676
in abeyance, i. 236
knight's, ii. 614
limited, i. 238, n.
meaning of the word, i. 232
on a fee, i. 545
qualified, i. 239
simple, i. 233
absolute, i. 238
conditional, i. 238, 239
determinable, i. 238, n.
qualified, i. 238
tail, i. 241, 245—see ENTAILS.
words necessary to create, i. 237

Fees, attorney's, iii. 218, 219
barrister's, iii. 275, 276
physician's, iii. 212
surplice, ii. 740

Feigned issue, iii. 601

Fellows of the college of surgeons, iii. 210

Felo de se, ii. 640, n.; iv. 60, 459

Felon, definition of word, iv. 7
infant, ii. 312; iv. 333

Felonious homicide, iv. 59
offences under the Marriage Act, ii. 249, 257

Felony, iv. 7
attainder on, iv. 453
bail for, iv. 356
by bankrupt, ii. 161
compounding, iv. 232
concealment of, iv. 233
definition of, iv. 7
escheat for, i. 210, 446
forfeiture on, iv. 9
misprision of, iv. 233
power of justices to bail for, iv. 356
punishment of, in general, iv. 443, 444
second conviction for, iv. 431, 432
treason, iv. 167

Felony Act (1870), i. 446; iii. 660; iv. 10, 62, 459

Female franchise, ii. 364, n.
sheriff, ii. 624, n.
wards, marriage of, i. 149

Females, abduction of, iv. 84
defilement of, iv. 85
may vote at municipal elections, iii. 34, n.
whipping, iv. 448

Feme covert, coercion of, ii. 272
contract by, ii. 269
conveyances by or to, i. 476, 583
disabilities of, ii. 269
may act in autre droit, ii. 268
may be agent, ii. 65, n.
executrix, ii. 190, 268
scire facias against, iii. 590
when she may be bankrupt, ii. 151
will by, i. 595, n.; ii. 186, 269

Fences, injuries to, iv. 140
stealing, iv. 122, n.

Feodum—see FEUDUM.

Feoffee, i. 231, 282, n.
to uses, i. 361

Feoffment, i. 176, 231, 503
by a lunatic, i. 474
forfeiture by, i. 317, 465
in gavelkind, i. 213
must be by deed, i. 508
to uses, i. 370, 532
tortious operation of, i. 510

Feoffor, i. 231, 282, n.

Feorme, i. 514

Feræ naturæ, animals, i. 160, 665; ii. 4, 19, 221, 548; iii. 247; iv. 116

Ferrets, ii. 7, n.

Ferries, i. 663; ii. 594, n.

Feud, i. 173
honorary, i. 179
military, i. *ib.*
proper and improper, i. 180

Feudal system, origin of, i. 172
tenures, introduction into England, i. 181; iv. 493

Feudum antiquum, i. 394, 410
apertum, i. 436
improprium, i. 180
individuum, i. 404
militare, i. 188
novum, i. 394
novum ut antiquum, i. 395, 410
paternum, i. 395
proprium, i. 180
talliatum, i. 243, n.

Fiat in bankruptcy, ii. 153, n.

Fictitious capital, ii. 166
plaintiffs, iv. 235

Fidei commissum, i. 357

Fidejussores, iv. 291

Fief—see FEUD.
d'haubert, i. 188

Fierding courts, iii. 280, n.

Fieri facias, iii. 583
de bonis ecclesiasticis, iii. 585
what may be seized under a, iii. 584

Fifteenth, tax of the, ii. 3, 550

Filing bill in equity, iii. 596
bill of sale, ii. 52.
declaration of insolvency, ii. 152
information, iii. 72, n.; iv. 374
interrogatories, iii. 597
petition in bankruptcy, ii. 153

Filius nullius, ii. 299

Final decree, iii. 601
judgment, iii. 569
execution on, iii. 572
process, iii. 489, n.

Finding bill by grand jury, iv. 367
property by, ii. 10, 546

Fine in copyhold estate, i. 628
on alienation, i. 178, 199, 222
punishment by way of, iv. 444

Fines, i. 249
abolition of, i. 250, 558, 575
and Recoveries Act, i. 575
bound parties and privies, i. 564
by married women, i. *ib.*
by tenant in tail, i. 249, 566
discontinuance by, i. 567
feudal, i. 559.
forfeiture by, i. 567
former force of, i. 564
non-claim on, i. 565
partes finis nihil habuerunt, i. 566
with proclamations, i. 562, 564, 565
And see RECOVERY.

Fire, accidental, ii. 236
attempts to, iv. 103
bote, i. 256, 287
by negligence, iii. 405
engines, providing, ii. 699
insurance, ii. 135; iii. 435
ordeal by, iv. 408
policy, ii. 135

Fireworks, iv. 276

Firing churches, iv. 102
coal mines, iv. 104
crops, iv. 103
dwelling-houses, iv. 102
railway stations, iv. *ib.*
ships, iv. 104
stacks, iv. 103

Firm, bankruptcy of a, ii. 150
guarantee to a, ii. 106
partnership, ii. 99

First-class certificate of bankruptcy, ii. 161, n.

First cousins, marriage between, ii. 243
fruits, i. 199; ii. 673
of spiritual preferments, ii. 531
meeting of creditors, ii. 156

Fish, property in, i. 672; ii. 5, 19; iv. 116
royal, ii. 19, n., 448, 539, 540
stealing or destroying, iii. 166, n.; iv. 116, 331
unlawfully taking, iv. 331

Fisheries, conventions concerning the, iii. 167
laws as to, i. 670; iii. 165—167

Fishponds, injuries to, iv. 140

Fitzherbert's Abridgment, i. 51

Fixtures, ii. 217—220
may not be distrained, iii. 250
stealing, iv. 122, n.

Fleet marriages and baptisms, iii. 238

Fleets, ii. 497, 593—598

Fleta, i. 51; iv. 503

Flight, forfeiture by reason of, iv. 460

Flogging, iv. 449

Flotsam, jetsam and ligan, ii. 542; iii. 342

Flour, adulteration of, iv. 269

Fœnus nauticum, ii. 93
unciarium, ii. 91, n.

Folkland, i. 215

Foot of a fine, i. 562
races, iv. 275, n.

Force, injuries with, iii. 365

Forces, military, ii. 582—593
naval, ii. 593—598

Forcible detainer, iii. 384, 423; iv. 256
entry, iii. 244, 396, n., 399, n.; iv. 256

Foreclosure, i. 307

Foreign affairs, secretary for, ii. 459
attachment, custom of, iii. 589, n.
bill of exchange, ii. 115
coin, offences as to, iv. 193
dominions of the sovereign, i. 115
Enlistment Act, iv. 196

Foreign Jurisdiction Act, i. 103
merchants, ii. 496
states, serving, iv. 196

Foreigners, contracts by, ii. 17
crimes of, in this country, iv. 31, n.

Forensic medicine, i. 8

Foreshore, rights in the, ii. 536

Forestalling, iv. 266, n.

Forest courts, iii. 317, n.
franchise of, i. 665, 669
laws, i. 667; iv. 491
of Dean, ii. 549, n.
royal, i. 687, n.; ii. 538

Foretooth, depriving of, iii. 374

Forfeiture, i. 178, 200, 210, 298, 362; iii. 660
by alienation, i. 298, 317, 457, 459
by felony, abolished, iv. 10
in copyhold, i. 222, 628
in feuds, i. 178
in murder, iv. 457
inquest to ascertain, iii. 660
in treason, iv. 454
of a bond, ii. 110
of lands and chattels, difference between, iv. 459, 460
of lease, i. 304, n.
of recognizance, iv. 294, 296
on attainder, i. 208, 370, 443; iv. 454
revenue from, ii. 550
title by, i. 454; ii. 16, n.

Forfeitures granted as a franchise, ii. 552

Forgery, iv. 141—148
Act (1870), iv. 145
of great seal, iv. 143
of official documents, iv. 142, n.
of records, iv. 223
punishment of, iv. 144

Formal defects in indictment, iv. 400

Formedon, i. 567; iii. 392, n., 468, n.

Forms of actions, iii. 363

Fornication, iv. 280

Fortescue, i. 51

Fortifications of arsenals and dockyards, ii. 498, n.

Forts, prerogative as to, ii. 498

Fortune tellers, iv. 210

Founder of a corporation, iii. 26

Fowls of warren, i. 670

Fraction of time, i. 284

Franchise by occupation, ii. 353
disturbance of, iii. 411
female, ii. 364, n.
lying in, iii. 258
parliamentary, ii. 351—365

Franchises, i. 298, 661
royal, ii. 539—554

Frankalmoign, i. 226

Frank marriage, i. 244, n., 348
pledges, i. 125; iv. 321
tenement, i. 187, 231

Franking letters, ii. 570, n.

Fraud by bankrupt, iv. 264—see BANKRUPT.
in contracts, ii. 61, 138
in insurance, ii. 139
obtaining property by, iv. 146
redressed in equity, iii. 448

Frauds, statute of, i. 432, 507, 512, 515, 517, 523; ii. 50, 51, 55, 70, 71, 105, 188

Fraudulent concealment of deeds, iv. 147
consideration, ii. 61
conversion, iv. 131
conveyance, ii. 152
debtor, punishment of, ii. 159
defilement of young females, iv. 91
devises, statute of, i. 433
grant of conveyance, ii. 152
preference, ii. 168
representation, iii. 427, 428
sale of goods, ii. 52
Trustee Act, iv. 224

Free bench, i. 627; iii. 606, n.
chapels, ii. 746, n.
fishery, i. 670, 671
services, i. 186

Free socage, i. 186, 205
warren, i. 670

Freedom of a borough, iii. 40

Freehold, i. 210, 230, 231, n.
by wrong, i. 510
customary, i. 225
estate, i. 231
in abeyance, i. 236
in futuro, i. 331, 544
in law, i. 430
remainder, i. 319
rent, iii. 430
vote for a county, ii. 352, 360

Freeholders in sheriff's county court, iii. 282

Freeman, iii. 34
of London, ii. 360, n.

Freemen's roll, ii. 363; iii. 40

Free schools, iii. 96

Freight, ii. 140, n.; iii. 435
pro ratâ itineris, ii. 142

Freighter, ii. 140

Freighting a ship, ii. 140

Frequent parliaments, ii. 326

Fresh suit, ii. 547

Friendly societies, iii. 86—89
registrar of, iii. 88

Fructus industriales, ii. 215

Fruit, injuries to, iv. 140
stealing, iv. 122, n.

Fulham, convicts at, iii. 126, n.

Full age, ii. 302—see AGE.

Fund, borough, iii. 38
common, of union, iii. 51, 62, n.
consolidated, ii. 578
for friendly societies, iii. 82
for savings bank, iii. *ib.*
sinking, ii. 579, n.

Funded debt, ii. 574

Funds, public, ii. *ib.*
charging in execution, iii. 588

Funeral expenses, ii. 200

Furiosus furore solum punitur, iv. 25, 468

Furious driving, iii. 181, n.; iv. 282

Future interests of married women in personalty, ii. 266

Future, estates in—see EXPECTANCY, ESTATES IN.

G.

Gage by champion, iv. 412
estates in, i. 304

Gambling in the streets, &c., iv. 275

Game, i. 160, 665; ii. 9, 19; iv. 491
Act, ii. 20, 21
certificate, ii. 20
definition of, ii. 21
destroying by night, iv. 285
enactment as to hares, ii. 21
killing, iv. 214, n.
licence, ii. 20, 567
qualification, ii. 20
trespass, ii. 22

Gaming, iv. 272
houses, iv. 273
policies, ii. 137, 138

Gaol delivery, iii. 352; iv. 315
courts of, iv. 313
fees, iv. 434

Gaolers, ii. 633

Gaols, iii. 121—127
in boroughs, iii. 38, n.

Garden produce, stealing, iv. 122, n.

Garnishee, iii. 588

Garter, knight of the, ii. 612

Gas companies, iii. 178, n.
measures, ii. 519, n.
sale of, ii. *ib.*

Gavelkind, i. 54, 210, 212; iv. 483

Gazette, London, ii. 104, 155, 156, 158, 161, 507, n., 731; iii. 227

General agent, ii. 66
annual licensing meeting, iii. 195
average, ii. 134
board of health, iii. 175
council of medical education, iii. 208
councils, ii. 321
demurrer, iii. 501, n.
fund, ii. 578
gaol delivery, iv. 313
Inclosure Act (41 Geo. III. c. 109), i. 655
issue, iii. 503; iv. 405
lien, ii. 83
light-house authorities, iii. 160
Militia Act, ii. 587
poor law rules, iii. 49
quarter sessions, iv. 317
register offices, iii. 155, 235
reprisals, ii. 494, n.
tail, i. 244
verdict, iv. 433
Vestry Act, i. 121
warrants, iv. 345, n.

Genoa, iii. 321

Gentlemen, ii. 617

George, St., knight of, ii. 612

Gestation, period of, ii. 287, n.

Gift, inter vivos, ii. 46, 48
mortis causâ, ii. 48
of chattels, ii. 47
of lands, i. 509
title by, ii. 44
when valid, ii. 47
when void, ii. *ib.*

Gilbert, Chief Baron, i. 52

Gilbert's Act, iii. 50

Gild, iii. 10, n., 31

Gilda mercatoria, iii. 10

Gins, setting, iv. 96

Girls, abduction of, ii. 291; iv. 84
abuse of young, iv. 91

Glanville, i. 31; iv. 497

Gleaners, law respecting, iii. 401, n.

Glebæ ascriptitii, i. 188

Glebe, ii. 714

Glonoine oil, ii. 86, n.

Gloucester, Duchess of, ii. 609

Gold and silver, value of, ii. 521
coin, offences relating to, iv. 188

Gold mines, ii. 549
relative value of, ii. 521
standard of, ii. 523

Good behaviour, security for, iv. 295
consideration, i. 497; ii. 61
Friday, ii. 123—see SUNDAY.

"Good" jury, iii. 517, n.

Goods and chattels, i. 280; ii. 2
assignment of, ii. 49
forfeiture of, iv. 459
in the order and disposition of bankrupt, ii. 165, 166
operation of judgment on, iii. 572
restitution of stolen, iv. 437—439
sale of, ii. 68
actions on, iii. 431

Governing body of school, iii. 98, 101

Government annuities, iii. 81, n., 84
different forms of, i. 30
influence of, ii. 599, 600
maladministration of, ii. 480—484
of the navy, Act for the, ii. 595
offences against the, iv. 149—200
origin of, i. 29
trains, iii. 185, n.

Governor-general of India, i. 112

Grace, days of, ii. 117, n.

Grammar schools, iii. 99
commission, iii. 100

Grand assize, iii. 392, n.; iv. 412, n.
cape, iii. 606, n.
coustumier of Normandy, i. 44, n., 101
jury, iv. 361
larceny, iv. 119
serjeanty, i. 200, 210

Grant at common law, i. 510
by the crown, ii. 479
lying in, i. 511
royal, i. 618—622
to uses, i. 539

Grantee of reversion, i. 302, 514

Gratian's decree, i. 64

Gratuitous gift, ii. 47

Grave, robbing a, iv. 118

Great Britain as defined by Act of Union, i. 87
Britain and Ireland, population of, i. 134, n.
charter,—see MAGNA CHARTA.
ports, ii. 500
seal, i. 619
sessions in Wales, iii. 317, n.

Greenwich hospital, ii. 597

Gregorius, i. 63

Gregory's Decretals, i. 65

Gross, advowson in, ii. 716
common in, i. 652
neglect, ii. 82, n., 85
profits, payment out of, ii. 103
villein in, i. 216, 219

Grounds for new trial, iii. 558

Growing crops, taken in execution, iii. 584

Guarantee, action on, iii. 433
companies limited by, iii. 23, n.
contract of, ii. 105
in respect of public office, ii. 623, n.
to or for a firm, ii. 106

Guardian and ward, ii. 302—315
ad litem, ii. 303, 312; iii. 271, n.
by court of chancery, ii. 311
by custom, ii. 313
by election, ii. 310
by nature, ii. 308
by statute, 310
duties of, ii. 313—315
for nurture, ii. 309
in chivalry, i. 190
in copyhold, i. 221
in socage, i. 207; ii. 309
injuries to, iii. 440
of heir apparent, ii. 477
rights of, ii. 313—315
to consent to marriage, ii. 312

Guardians of poor, iii. 47

Guardianship of father, ii. 288

Guernsey, island of, i. 100

Guildhall, iii. 10, n.

Guild merchant, iii. 32

Guilds, iii. 31
of London, ii. 360, n.

Guilty, plea of, iv. 335
plea of not, iv. 405

Gunpowder, illegal making or keeping, iv. 275
importation of, ii. 502
monopolies as to, iv. 266
unlawful explosion or placing of, iv. 79

Gypsies, iv. 288, n.

H.

Habeas Corpus Acts, iii. 648, 650; iv. 515
cum causâ, iii, 643, n.
suspension of, i. 147
to colonies, iii. 644
writs of, i. 145, 147; ii. 313, 343, 469, 599; iii. 384, 642—652; iv. 357, 382, n.

Habendum of a deed, i. 486

Habitations, offences against, iv. 99
property in, i. 154

Hackney carriages, iii. 180

Hæreditas jacens, i. 449
nunquam ascendit, former maxim of, i. 410, 449

Hæretico comburendo, writ of, ii. 705, n.; iv. 204, 205, n., 515

Hale, Sir Matthew, i. 51; iv. 377, 501

Half-blood, i. 420
former exclusion of, in England, i. 421, 424, n.
in descent, doctrine as to, ii. 195, 418
new rule as to, i. 425

Hamesecken, iv. 104

Hamlet, i. 125

Hampden, Dr., ii. 667, n.

Hanaper office, iii. 322, n.

Hand, amputation of, iv. 187, 225, n.
burning in the, iv. 441, n.
holding up, on arraignment, iv. 390

Handsale, ii. 69, n.

Handwriting, forgery of, iv. 142
witness to, iii. 545

Hanging, iv. 75, 481
in chains, iv. 75

Harbour Acts, ii. 501; iii. 9, n.

Harbours and ports, ii. 501; iii. 9, n.

Hard labour, iv. 447

Hares, beasts of warren, i. 670
killing, iv. 331
property in, ii. 21; iv. 116

Harold, king, ii. 422

Harwich harbour, ii. 501, n.

Harrow school, iii. 97.

Hastings, Warren, iv. 473, n.

Havens, ii. 499

Hawk, stealing tame, ii. 7, n.

Hawkins, Pleas of the Crown, i. 51

Hay bote, i. 257, 288

Hazard, gambling at, iv. 272

Head of the church, ii. 524

Headborough, i. 124; ii. 653

Health, injuries affecting, i. 144; iii. 376
laws relating to the public, iii. 168—179; iv. 289
of seamen, iii. 153

Hearing charge before a magistrate, iv. 330

Hearsay evidence, iii. 543; iv. 429

Hebdomadal council, iii. 6, n.

Hedge bote, i. 257, 288

Heir, i. 232, 245
alien can be, i. 440
apparent, i. 389
attainted person cannot have, i. 446
a word of limitation, i. 238
bastard cannot be, i. 438
entry of, i. 430, 506
liable to debts of ancestor, i. 432
limitation to, i. 334, 335, 400, 426
of the body, i. 245—see ENTAILS.
presumptive, i. 389
where he takes by purchase, i. 400, 426
who cannot be, i. 436

Heiress, stealing an, iv. 84

Heir-looms, ii. 222

Helping to stolen goods, iv. 231

Hengham, iv. 503

Henry I. ..iv. 495

Henry II. ..iv. 496

Heptarchy, ii. 420, 436

Heralds, iii. 335, n.
visitations by, 336, n.

Hereditament, corporeal, i. *ib.*
incorporeal, i. 170, 647—693 — see INCORPOREAL HEREDITAMENTS.
meaning of, i. 170

Hereditary right, doctrine of, ii. 418

Hereford, see of, ii. 667, n.

Heresy, ii. 703; iv. 203

Heretochii, ii. 583, 602

Heriots, i. 221, 628, 629; iii. 257

Hermogenes, i. 63

High constable, i. 126
commission, court of, iii. 309, n.; iv. 509
court of admiralty, iii. 341
of chancery, iii. 320
of justice, iii. 347—355
divisions of, iii. 353, 354
judges of, iii. 347
misdemeanors, iv. 254
seas, i. 116; iv. 312, 364
steward—see STEWARD.

Hidden treasure, ii. 546

Highway, i. 658; iii. 128
Acts, iii. 130, 132, 136
board, iii. 134, 136
by dedication, iii. 128, n.
district, iii. 136
in general, iii. 131, 132
nuisances to, iv. 270
provisional order of sessions as to, iii. 136, n.
surveyor of, iii. 133—137

Hiring servants, ii. 233
settlement by, iii. 55

Hobart's Reports, i. 50

Hobhouse's Act, i. 121, n.

Holding over, by tenant, i. 293—296; iii. 624, n., 625
up hand on arraignment, iv. 390

Holidays, common law, iii. 592, n.

Holyhead Harbour, ii. 501, n.

Holy orders, ii. 660

Homage, i. 177; ii. 400, 665
in copyhold, i. 636

Home secretary, ii. 459

Homicide, iv. 47
excusable, iv. 52
felonious, iv. 48, 59
in arresting felons, iv. 50
justifiable, iv. 48, 57
per infortunium, 4, 52
se defendendo, iv. 52
to prevent crime, iv. 50, 51, n.

Homine replegiando, writ de, iii. 643, n.

Honor (or seigniory over several manors) of lord paramount, i. 215

Honorarium, iii. 275

Honorary canons, ii. 675
feuds, i. 179

Honour, accepting for, ii. 122
fountain of, ii. 514

Honours in the state, ii. 331

Hopbinds, injuries to, iv. 139

Horse-racing, iv. 274, n.

Horses, sale of, ii. 75
stealing, iv. 113

Hospitals, iii. 27, 60, n.
for the poor, iii. 70
lunatics in, iii. 114, 119

Hotchpot, i. 348; ii. 211

Hothouses, malicious injuries to, iv. 231

House bote, i. 256, 287
breaking, iv. 111
implements, iv. 109
of commons, ii. 326, 333, 338, 347, 381—and see PARLIAMENT.
of correction, iii. 122
of lords, ii. 328—332, 345; iii. 355; iv. 299, 471
sanctity of a man's, iv. 104
tax, ii. 568

Household suffrage, ii. 362

Houses for betting, iv. 273, n.

Houses for public reception and entertainment, iii. 194—203

Howth Harbour, ii. 501, n.

Hue and cry, iv. 351

Human laws, obligation of, i. 37

Hundred court, iii. 396
compensation by the, i. 126, n.
division of counties into, i. 123, 127
liability of the, i. 126, n.

Hundredors, on a jury, iii. 522, n.; iv. 362

Hunger, no excuse for theft, iv. 35

Hunting beasts of prey, iii. 401

Husband, administering to wife, ii. 193, 266
adultery of, ii. 278
and wife, ii. 225, 238—282
coercion by, ii. 272
deserting wife, ii. 267; iii. 57, 61, n.
evidence of, against wife, iii. 534
injuries to, iii. 437
rights over wife's person, ii. 263
rights over wife's property, ii. *ib.*
scire facias against, iii. 593
when liable for debts of his wife contracted before marriage, ii. 271

Hustings, courts of, iii. 293, n.

Hutesium et clamor, iv. 351

Hydage, ii. 556, 558

Hypothecate, ii. 92, n.

I.

Idiots, ii. 62, 508, 510, 511—see LUNATICS.
conveyances by, i. 474
devise by, i. 593, 595

Idle and disorderly persons, iii. 97; iv. 287
soldiers and marines, iv. 288, n.

Ignoramus billam, iv. 367

Ignorance, how far an excuse for crime, iv. 30
in a foreigner of English law, iv. 31, n.

Illegal combination, iv. 327
conditions, i. 302; ii. 110
consideration, i. 498; ii. 61
contract, ii. 61, 64
societies, iv. 197

Illegitimate children, ii. 283, 296

Ill fame, persons of, iv. 295

Illicitum collegium, iii. 8

Illusory appointments, i. 549, n.

Imagining the king's death, iv. 151

Immediate annuities, iii. 84
descent, i. 418
execution, iii. 566, n., 570, n.

Immemorial usage, i. 46, 685

Immoral consideration, ii. 61
publication, ii. 39

Impar (umpire), iii. 260

Imparl, to, i. 569

Impartible things, i. 351

Impeachment in parliament, ii. 481; iv. 299
of ministers, ii. 481
of waste, i. 257; iii. 407, 453
pleading pardon to, iv. 471
proceeding by, iv. 299

Impediments to marriage. ii. 241—245

Imperator, iii. 260

Imperial constitutions, i. 62

Implements of housebreaking, iv. 109
of trade, when distrainable, iii. 251

Implied condition, i. 297
contract, ii. 57; iii. 430
covenant, i. 490
malice, iv. 72
trust, i. 374
use, i. 361
warranty, i. 488, 516; ii. 77

Import duties, revenue from, ii. 560

Importing arms, ii. 502
false coin, iv. 193
gunpowder, ii. 502; iv. 183
papal crosses, &c., iv. 182

Impossible condition, i. 302; ii. 64, 110

Impostors, religious, iv. 212

Impotency, a canonical disability, ii. 240

Impotentiam, propter, property, ii. 8

Impounding cattle, iii. 255; iv. 283

Impressing seamen, ii. 594

Imprisonment, false, iii. 384
illegal, i. 145; iii. 384; iv. 97
punishment by, iv. 447
under process of county court, iii. 289

Improper feuds, i. 180

Impropriators, lay, ii. 679

Improvement of Lands Act (1864), i. 232, n.

In alieno solo, profit, i. 683

Inanimate things, property in, ii. 4

Incapacity for marriage, ii. 241—245
of bishop, ii. 673
to contract, ii. 62

Incest, iv. 280, n.

Incestuous marriages, ii. 242

Incidents to reversions, i. 315
to the arraignment, iv. 389

Incipitur, iii. 566, n.

Inclosure Acts, i. 655—657
commissioners, i. 656
of common, i. 654

Income of the United Kingdom, ii. 579

Income tax, ii. 573

In commendam, livings, ii. 692; iv. 174

Incontinency, suits for, iii. 310, n.

Incorporated Law Society, iii. 217

Incorporation, power of, iii. 8, 9

Incorporeal chattels, ii. 9
hereditaments, i. 170, 647—693; iii. 244, 398
are tenements, i. 681

Incorporeal hereditaments, extinction of, i. 692
how conveyed, i. 682
no entry on, iii. 244, 398

Incorrigible rogues, iv. 287

Incumbent, ii. 689

Indecent assault, iv. 92, 93, 98
pictures, iv. 281

Indemnity, Act of, ii. 622, n.

Indenture, i. 482

Indentures of a fine, i. 562

Independents, the, ii. 622

Index of patent specifications, ii. 30, n.

India, i. 110
Acts relating to, i. 114, n.
army of, ii. 589, n.
imperial resumption of, i. 113
marriages in, ii. 259, n.
secretary for, ii. 459

Indian bishops, i. 112
mutiny, i. 113
presidencies, i. 112
trade, iii. 147, n.

Indicavit, writ of, iii. 312

Indictable misdemeanor, binding over in case of, iv. 297
offences, iv. 6

Indictment, iv. 366
against peer for treason or felony, iv. 302
amendment of, iv. 371
arrest of judgment upon, iv. 400, 440
confession of, iv. 394, 427
copy of, for prisoner, iv. 420
demurrer to, iv. 371
for libel, iii. 381
form of, in different offences, iv. 370, n.
formal averments in, iv. 372
formal defects, iv. 400
for misdemeanor when facts proved amount to felony, iv. 372
general form of, iv. 369
limitations in, iv. 368—373
of a county, iii. 131
of a corporation, iii. 14
of a parish, iii. 131
of peers, iv. 302

Indictment, pleading to, iv. 490
quashing, iv. 400
removal of, by certiorari, iv. 303, 307, 373—378
unnecessary averments in, iv. 372
variance in, iv. 371
venue in, iv. 368
vexatious, iv. 368
words of art in, iv. 369
writ of error upon, iv. 463

Individual liability of members, iii. 18
of directors, iii. 19, n.
of registered companies, iii. 22

Indorsee, ii. 116

Indorsement of bills and notes, ii. *ib.*
of a bill of lading, ii. 49
on writ of summons, iii. 491, 492

Induction to a benefice, i. 506; ii. 686; iii. 610; iv. 173

Indulgences, iv. 172

Industrial and provident societies, iii. 90, 91
schools, ii. 291; iii. 110

Industriam, property propter, ii. 5

Infamous persons, evidence of, iii. 533.

Infancy, how computed—see AGE.
when excuse for crime, iv. 23

Infant, ii. 302
alienation by, i. 476; ii. 304
cannot be member of parliament, ii. 304, 337
contract by, ii. 62, 304, 306, 307
conveyance by and to, i. 476
crime by an, iv. 23
devise by, i. 593—595
disabilities of, ii. 304
doli capax, iv. 23
felon, ii. 312; iv. 23
liabilities of, ii. 303—308
may be agent, ii. 65, n., 304
marriage by, ii. 244, 248, 252, 305, 312
necessaries for, ii. 307
outlawry of, iv. 383, n.
rape by, iv. 88
trustee, ii. 305
when executor, ii. 190, 196
will by, ii. 187

Infantia, iv. 23

Infectious disease, prevention of, iii. 174

Inferior courts, iii. 278—317; iv. 298
how affected by the Judicature Act (1873), iii. 279
jurisdiction of Queen's Bench over, iii. 332

Infeudation of tithes, ii. 725

Inflicting punishment, method of, iv. 298

Influence of the Crown, ii. 599, 600

In formâ pauperis, suing, iii. 576

Information before a magistrate, iv. 335, 373
by attorney-general, iv. 374
by way of quo warranto, iii. 639, 641, n.
compounding, iv. 234
criminal, iv. 374
in chancery, iii. 72, 596
in exchequer, iii. 690
of debt, iii. 669
of intrusion, iii. *ib.*
on penal statute, iii. 479; iv. 229
process upon criminal, iv. 388
trial of, iv. 375

Informer, common, iii. 479

Infortunium, homicide per, iv. 52

Infra annum luctûs, marriage, ii. 288

Infringement of copyright, ii. 38; iii. 429, n.
of patent, ii. 32; iii. 429, n.

Inhabitant occupier, vote as, ii. 362
rateability of a man as, iii. 65

Inhabited house duty, ii. 568

Inheritable blood, i. 438.
corruption of, iv. 459

Inheritance Act, i. 390
canons of, i. 391—430
collateral, i. 417
copyhold of, i. 625
estates of, i. 231

Inheritance, improvement of law of, i. 390; iv. 520
origin of title by, i. 161

Initiate tenant by curtesy, i. 265

Injunction, in case of copyright, ii. 38; iii. 429
in case of patent, ii. 32
to stay nuisances, iii. 405
waste, iii. 408
under Judicature Act (1873), iii. 462, n.

Injuries affecting the Crown, iii. 654—671
affecting the public — see CRIMES.
civil, i. 138; iii. 239—671
cognizable at common law, iii. 372—445
in equity, iii. 446—465
to a man's child, iii. 440
public rights, iii. 443
servant, iii. 440
ward, iii. *ib.*
wife, iii. 439
to health, iii. 376
to liberty, iii. 384
to life, iii. 372
to limbs, iii. 373
to personal rights, iii. 372—385
to public statues, iv. 140
to rights in private relations, iii. 436—443
to rights in public relations, iii. 443
to things personal, iii. 420, 436
to things real, iii. 385—420

Injuring records, iv. 223

Inland bill of exchange, ii. 115
revenue, board of, ii. 567

Innkeepers, ii. 57, 84, 85

Innocent conveyances, i. 551

Inns, ii. 84; iii. 273, n.; iv. 271, n.
of chancery, i. 16, 19
of Court, *ib.*

Innuendo, iii. 382, n.

Inoculation, iii. 171

Inofficious will, i. 595, n.; ii. 289

In pais, matter, i. 503

In pari materiâ, statutes, i. 77

Inquest, coroner's, i. 192; ii. 637
on body of criminal, ii. 641
of office, iii. 659—662

Inquiry, court of, ii. 590, n.
writ of, iii. 570

Inquisition, coroner's, ii. 637
of office, iii. 659

Inquisitio post mortem, i. 192

Inrolment of bargain and sale, i. 535

Insane criminals, iii. 116; iv. 25
paupers, iii. 113
persons—see LUNATICS.
conveyances by and to, i. 474
devise by, i. 593, 595

Insanity, defence on the ground of, iv. 25, 393, 468

Insecure titles, provisions as to, i. 694

Inspection, committee of, ii. 156, 157, n., 171
by jury, iii. 521
by matrons, iv. 467
of anatomical schools, iii. 213
of coal mines, iii. 178, n.
of documents, iii. 540, n.
of prisons, ii. 655; iii. 121
of property, iii. 521, n.
of public houses, iii. 196
of railways, iii. 183
of schools, iii. 94, 106, 107
trial by, iii. 518, n.

Inspectors of police, ii. 657
of schools, iii. 107
of watchmen, ii. 658
of weights and measures, ii. 519, n.

Instalment in dignities, i. 506
of bishop, ii. 684
order to pay by, iii. 289, n.

Instant trial of collateral issue, iv. 468

Institutes of Gaius, i. 63, n.
of Justinian, i. 62—64
of Sir E. Coke, i. 50

Institution of clerks in orders, ii. 686; iii. 417, 611

Institutions, benevolent, iii. 80

Insurance, ii. 127—139; iii. 435; iv. 518
to secure money lent, ii. 96
Insurer, the, ii. 127
Intention to commit crime, iv. 22, 153
Interesse termini, i. 287, 518, 519
Interest, ii. 90—98; iii. 651, n.
awarded by jury, ii. 98; iii. 552, n.
different rates of, ii. 91
in policies, ii. 137
on debts, ii. 98
on judgment debt, ii. 99; iii. 574
on legacies, ii. 207
or no interest, insurance, ii. 137
reipublicæ ut sit finis litium, iii. 466.
Interested witness in action, iii. 646
to will, i. 597
Interests, reversionary, i. 337
Interim curators, iv. 462
orders pending appeal, iii. 581
Interlineation of a deed, i. 497
Interlocutory degree, iii. 315, 601
judgment, iii. 569
mandamus, iii. 635
Intermediate examination of articled clerks, iii. 216, n.
Interments, iii. 178, n.
International copyright, ii. 41
trading regulations, iii. 143
Interpleader, motion by way of, iii. 590
Interpretation of statutes, i. 71
Interregnum, ii. 478
Interrogatories, filing, iii. 597
in an action, iii. 532
in attachment, iv. 343
Intestacy, ii. 181
Intimidation of witnesses, iv. 226
of workmen, iv. 241
Intituling pleadings, iii. 500
Intoxicating Liquors' Licensing Act (1828), iii. 195
Intoxication, effect on a contract, ii. 63
no excuse for crime, iv. 29
offence of, iv. 281
Intra annum luctûs, marriage, ii. 288
Intrusion, information of, iii. 669
ouster by, iii. 386
Invention, title by, ii. 25—43
Inventor, true and first, ii. 27
Inventory of deceased's effects, ii. 201
Investiture of benefice, ii. 688
of land, i. 505, 613
of temporalities of bishop, ii. 667
Investments by trustees, iii. 469
in savings' banks, iii. 81
Involuntary manslaughter, iv. 52
Ionian Isles, marriage in, ii. 260, n.
Ireland, i. 91—98
act of union with, i. 96; iv. 519
population of, i. 134, n.
removal of paupers to, iii. 57, n.
Irish bishops, ii. 328
church, i. 97
disestablishment of, i. 97, n.
fisheries, iii. 166
peers, ii. 331, 366, n., 611
representative peers, ii. 347
Irons on prisoners, iv. 390
Irregular distress, iii. 257, 401
marriages, ii, 259, n.
Irrelevant evidence, iii. 541
Irremovability, status of, iii. 60
Irresponsibility of sovereign, ii. 478
Islands adjacent to Great Britain, i. 98
Channel, i. 100; iii. 160, 476, n.
rising in the sea, i. 452
Isle of Man, i. 99; ii. 501, n.; iii. 160
of Wight, i. 98
Issue, i. 244
department of, Bank, iii. 226
"dying without," i. 609; ii. 207
general, iii. 503; iv. 405
in an action, iii. 490
in fact, iii. *ib.*
in law, iii. 499, 508
joinder of, iii. 508; iv. 406, n.

Issue, making up the, iii. 515
of Bank of England notes, iii. 226
of the purchaser, failure of, i. 409

J.

Jactitation of marriage, ii. 238, n.

Jamaica, Acts relating to, i. 106, n.

James I...ii. 433; iv. 512
II...ii. 436; iv. 516

Javelin men, ii. 629, n.

Jeofails, statutes of, iii. 563, 579, n.

Jersey, island of, i. 100; iii. 57

Jetsam, ii. 542; iii. 342

Jettisons, ii. 131

Jew bill, ii. 412, n.
cannot present to a benefice, ii. 710, 716

Jewels, crown, ii. 223, n.

Jewish disabilities, ii. 710
parent, ii. 292, n.

Jews, marriage of, ii. 250, 251, n., 255
naturalization of, ii. 408, n., 411, 412, n.
oath by, ii. 402
relief of, iii. 69

John, King, i. 184; ii. 425, 469

Joinder in demurrer, iii. 508
of issue, iii. 508; iv. 406, n.

Joining several causes of action, iii. 509

Joint adventure, ii. 102

Joint stock banks, ii. 75; iii. 20, 222, 224, 230
companies, ii. 129; iii. 19—25
Acts, iii. 19

Joint tenancy, i. 339
how dissolved, i. 344
in things personal, ii. 14

Jointure, i. 272, 339, 365; ii. 274

Jonathan Wild, iv. 231

Judex, iii. 270

Judge, advocate general, ii. 590, n.

Judge, assaulting a, iv. 225
is counsel for the prisoner, iv. 425, n.
of a county court, iii. 285
of the admiralty, iii. 343; iv. 311
of the Court of Probate, iii. 347
Ordinary, ii. 239

Judge's order by consent, iii. 571, n.

Judges, are the depositaries of the law, i. 46
killing one of the, iv. 159
not eligible to House of Commons, ii. 367
of assize, iii. 349, 519; iv. 314
of the Central Criminal Court, iv. 316
the, ii. 473; iii. 340, 341, 519, n.; iv. 225, 244, 308, 313
threatening the, iv. 225

Judgment, iii. 557
action on a, iii. 575
against casual ejector, iii. 619
arrest of, iii. 562; iv. 400, 404, 440
by confession, iii. 569
by default, iii. 506, 567, 569
by nil dicit, iii. 568
costs, part of, iii. 574
debt, ii. 144; iii. 574
delivering, iii. 568; iv. 443
effect of, iii. 572
elegit on, i. 310, 311, n.
entry on record of, iii. 566; iv. 443
error on, iii. 578; iv. 443
execution of, iii. 582
false, writ of, iii. 578
final, iii. 569
for want of appearance, iii. 495
in an action, iii. 557
in dower, iii. 607, 608
in ejectment, iii. 613
in quare impedit, iii. 612
in replevin, iii. 616
interest on, ii. 98; iii. 574
interlocutory, iii. 569
non obstante veredicto, iii. 564
of death, iv. 453
on cognovit, iii. 567
on demurrer, iii. 511, 567
on nolle prosequi, iii. 568

Judgment on nonsuit, iii. 568
operation of a, iii. 573
paper, iii. 566, n.
pronouncing, iii. 568
registration of, i. 252, n.; iii. 573
reversal of, iii. 578, 579; iv. 442
revivor of, iii. 591
signing, iii. 566
stopping, iv. 408
summons, iii. 289, n.
title by, ii. 16, n.

Judicature Act (1873), i. 6, n., 46, n., 82, 131, 308; iii. 319, 498, 581. And see TABLE OF STATUTES (36 & 37 Vict. c. 66)
Supreme Court of, iii. 318—357

Judicial committee, ii. 34, 461; iii. 346, 355
paid members of, ii. 462, 463, n.
separation, ii. 280
effect of, on dower, i. 268

Judicially noticed, what things are, iii. 539

Judicium Dei, iv. 407

Jura regalia, iii. 348

Jurati, iii. 529

Jurats, i. 101

Jure divino title to throne, ii. 414
title to tithes, ii. 780, n.
king de, ii. 428; iv. 151

Juries Act (1870), iii. 518, 527

Jurisdiction, courts of criminal, iv. 298—328
local, of the bishop, iii. 671
of chancery, iii. 455
of county court, iii. 286
of parliament, ii. 335
of Queen's Bench, iii. 332
of the admiralty, iv. 311, 365
of the central criminal court, iv. 315
of the ecclesiastical courts, iii. 302—317
plea to the, iii. 502; iv. 398

Juris scintilla, i. 368, n.

Jurors' book, iii. 516

Jurors, alien, iv. 421
challenge of, iii. 523—528; iv. 416—425
formerly witnesses, iii. 522, n.
in Middlesex, iii. 515, n.
intimidation of, iv. 226
lists of, iii. 517
panel, amendment of, iv. 423, n.
qualification of, iii. 524; iv. 418

Jury, trial by, iii. 513—553; iv. 416—435
advantages of, iii. 519, 553
at bar, iii. 514; iv. 418
at nisi prius, iii. 514
before sheriff, iii. 570
in criminal cases, iv. 418
in the county courts, iii. 289
origin of, iii. 513, n.
calling of the, iii. 520
common, iii. 516
de medietate, iii. 522, n.; iv. 327, 421
discharge of, iii. 550, 553; iv. 433
exemptions from serving on, iii. 527
grand, iv. 361
in chancery suit, iii. 601
judge's charge to, iii. 548
number of, iii. 516, 520, n.; iv. 421
of matrons, iv. 467
panel, iii. 516
petit, iv. 368, n., 418
precept to summon, iv. 418
process, iii. 488; iv. 418
special, iii. 517; iv. 308, n., 419
swearing the, iii. 523; iv. 424
unanimity of, iii. 550

Jus accrescendi, i. 343, 346; ii. 14
ad rem, i. 506
albinatûs, ii. 409, n.
coronæ, ii. 413
in re, i. 506
fiduciarium, i. 356
gentium, i. 24
patronatûs, iii. 417
postliminii, iii. 400
prætorium, iii. 323
precarium, i. 356
relictæ, ii. 180, n.

Justice, High Court of, i. 131; iii. 347—355

Justice, King, the fountain of, ii 504
offences against public, iv. 223
sale, denial, or delay of, ii. 472
Justices of the peace, ii. 642 ; iv. 314, 330
actions against, ii. 650 ; iii. 480
bail by, iv. 355, 357
bankrupt, ii. 648
borough, ii. 644 ; iii. 37
county, iv. 314
duties of, ii. 648
in eyre, iv. 497 ; iii. 349
licensing, iii. 199
number of, ii. 646
office of, how determined, ii. 647
of the quorum, ii. 643 ; iv. 314, 317
origin of, ii. 642,
petty sessions of, iv. 333
proceedings before, iv. 330
qualification of, ii. 646
stipendiary, ii. 645, n.
summary jurisdiction of, iv. 329—343
virtute officii, ii. 642, 643
visiting, iii. 123
warrant of, iv. 382
Justiciar, chief, iii. 336 ; iv. 498
Justiciary, lords, killing, iv. 159, n.
Justicies, writ of, iii. 282
Justifiable homicide, iv. 48
Justification of libel, iii. 383
plea in, iii. 503
Justinian, laws of, i. 11, 62
Juvenile offenders, iv. 332, 438, n.

K.

Keelmen, assaulting, iv. 267
Keeper of prison, iii. 121
Keeping the peace, security for, iv. 391
Keys, house of, i. 99
Kidnapping, iv. 93
Killing in self-defence, iv. 52
Kin, next of, ii. 193—196, 209
Kindred, table of, ii. 194
King (or Queen), ii. 395—412
abdication by, ii. 324, 436, 482
King (or Queen), allegiance to, ii. 399, 403
ambassadors of, ii. 484
arbiter of commerce, ii. 516
audience of the, ii. 456
can be guilty of no laches, ii. 483
can do no wrong, ii. 478 ; iv. 36
coronation oath of, ii. 397
councils of, ii. 455—463
death of, ii. 478
declaration of war by, ii. 491
de facto and de jure, ii. 405, 428; iv. 151
dignity of, ii. 476
dispenser of justice, ii. 504
family of, ii. 444—454
forces of, ii. 582—600
fountain of honour, ii. 514
grant by, i. 618, 622 ; ii. 479
head of the Church, ii. 524
hereditary rights of, ii. 418
his general relation to the people, ii. 395
how far barred by lapse of time, ii. 483
irresponsibility of, ii. 478
legislative power of, ii. 496
letters of marque and reprisal by, ii. 492
may issue writ of ne exeat regno, ii. 504
military command vested in, ii. 497
pardoning by, ii. 506 ; iv. 470
parens patriæ, ii. 508
perpetuity of, ii. 478
petitioning of, ii. 474
prerogative of, ii. 464—527
proclamations by, ii. 507, 508
prosecution by, ii. 505
remonstrance with, ii. 481
revenue of, ii. 528—581
review of his prerogative, ii. 598—600
safe-conduct by, ii. 494
succession of, ii. 413—443
title of, ii. 413
treaties by, ii. 490
ubiquity of, ii. 506
King's (or Queen's) Bench, iii. 331—333 ; iv. 303, 305, 307—310, 347, 356, 357, 364, 375—378, 424
division of High Court of Justice, iii. 353
may bail in all cases, iv. 357
usurpation of, iii. 333, n.

King's books, livings in, ii. 533
College, London, i. 20, n.
counsel, iii. 273, 274, n.; iv. 309
evidence, iv. 395
livings, iii. 421
printer, ii. 40, 389, n.
silver, i. 561

Knight bachelor, ii. 613
banneret, ii. 612, 616, n.
hood, i. 197, 203, 208; ii. 612, 614, n., 615, n.
of the Bath, ii. 613
of the Garter, ii. 612
of the shire, i. 128; ii. 333, 356, 369
service, i. 187—205; iv. 494

Knight's fee, i. 188

L.

Labour, how far the right of property founded upon, i. 157
imprisonment with hard, iv. 447

Labourers, ii. 228, 616, n., 617

La chambre des esteilles—see STAR CHAMBER.

Laches of infant, ii. 304
of sovereign, ii. 483

Lading, bill of, ii. 49

Læsione fidei, suits pro, iii. 325

Laity, the, ii. 660

Lambard on Equity, iii. 464

Lambeth degrees, ii. 670

Lancaster, county palatine of, i. 124; iii. 347, 356
court of duchy chamber of, iii. 347, n., 356
disfranchisement, ii. 334, n.

Land, carriers by, ii. 87
devisable before the Conquest, i. 163, 591
forfeiture of, on attainder, iv. 460
holden of the Crown, mediately or immediately, i. 232
legal signification of the word, i. 168, 392; iii. 470, n.
limitation of actions for, iii. 475
Land, origin of property in, i. 158
re-entry on, iii. 243, 390, 400, 624
registry Act, i. 694
subject to be inclosed, i. 656, n.
when affected by judgment, iii. 573

Landlord, ejectment by, iii. 624
lien of, iii. 584, n.
protection of, against execution creditor, iii. 583, 584
provisions in favour of, iii. 624
rent of, iii. 584

Land tax commissioners, ii. 559, n.
falls on proprietor, ii. 559, n.
origin of, i. 202; ii. 558
revenue from, ii. 554—559
the, ii. 554

Lands Clauses Consolidation Act, i. 165, n.; iii. 9, n.

Language of Acts, ii. 390, n.

Lapse of presentation, ii. 717; iii. 416

Lapsed devise, i. 606, 607
legacy, ii. 206

La reine le veut, ii. 387

Larceny Act (1861), ii. 75, n.; iv. 122, 319
aggravated, iv. 120
apprehension for, without warrant, iv. 348
at common law, iv. 117 n., 122
by bailees, iv. 114
by clerks and servants, iv. 129, 334
by factors, &c., iv. 132
by juvenile offenders, iv. 332
by part owner, iv. 117, n.
by trustee, iv. 133
compound, iv. 123
definition of, iv. 112
from the person, iv. 124, 334
grand, iv. 119
in a dwelling-house, iv. 123
in relation to post-office, iv. 135
in ships, wharfs, &c., iv. 124
mixed, iv. 123
must be of personal goods, iv. 114
of animals, iv. 116, 121
petit, iv. 119

Larceny, punishment for, iv. 118—121
second conviction for, iv. 120
simple, iv. 120, 334
summary jurisdiction in, iv. 120, n., 124, n., 332, 334
things not the subject of, iv. 114—117

Last examination of bankrupt, ii. 158, n.

Latent ambiguity, i. 500

Lathes in Kent, i. 127

Latitat, writ of, iii. 333, n.

Laudanum, unlawful administration of, iv. 82

Law and equity, administration of, in the Supreme Court of Judicature, i. 82
canon, i. 8, 12, 64; iv. 172
civil, i. 8, 62; ii. 284
common, i. 10, 40, 46
divine, i. 23
error in, iii. 338, n., 578, 580
feudal, i. 172
freehold in, i. 430
history of the, iv. 482—523
issue in, iii. 499, 508
martial, ii. 592, n.
merchant, i. 55
municipal, i. 25, 35
of nations, i. 24; iii. 346; iv. 215
of nature, i. 21
of revelation, i. 23
Roman, i. 62; ii. 284; iv. 496
society, iii. 217
statute, i. 68
study of the, i. 1—20
Terms, iii. 483—486
unwritten, i. 40—68
wager of, iii. 513, n.; iv. 490
written, i. 68—80

Lawful conveyances, i. 551, n.

Laws in general, i. 21—39
of England, i. 40—82
of Justinian, i. 62, 64
of Oleron, ii. 542; iii. 343
progress of the, iv. 482—523

Lay corporations, iii. 5
days, ii. 141
impropriators, ii. 679
investiture of bishops, ii. 667

Lazarets, iii. 169

Leading uses of fine or recovery, i. 564, 573

Leagues and alliances, ii. 490

Leap year, i. 283

Lease, i. 282, 284, 512
and release, i. 527, 537
building, ii. 739
by deed, i. 287, 513
by husband, i. 288, n.
by lessor of plaintiff, iii. 619
by tenant by the curtesy, i. 266
for life, i. 252, 257
in dower, i. 279
in tail, i. 252
college, i. 474; ii. 735
ecclesiastical, i. 474; ii. 734
entry and ouster, iii. 619
farming, ii. 737
in futuro, i. 513
in writing, i. 287
long, i. 255
operative words in, i. 514
practice as to preparing, i. 485, n.

Leasehold, franchise in virtue of, ii. 353

Leasing powers, i. 548

Lecture, copyright in a, ii. 40

Lecturers and parish clerks, ii. 665, n., 700

Lectures, law, i. 20, n.

Leet, court, iv. 321

Leeward Islands, Acts relating to, i. 105, n.

Legacies, ii. 204—208
charitable, iii. 80
lapsed, ii. 206
limitation of actions for, iii. 473
recovery of, ii. 213, n.
suits for, in county court, iii. 287, n.

Legacy duty, ii. 205, n., 571

Legal and equitable estates, i. 230, 308
education, i. 19
estate, i. 308, 374
transfer of, by order in Chancery, i. 376
liabilities, ii. 60
memory, i. 57, 686
profession, iii. 214—220
tender, ii. 522; iii. 225

Legalis homo, iv. 413

Legatees, residuary, ii. 208

Legates, iv. 178

Legatine constitutions, i. 65

Leges scriptæ, i. 68

Legislative power, i. 32; ii. 318
of king, ii. 496
of convocation, ii. 526, n.

Legitim, ii. 180, n.

Legitimacy, judicial declaration as to, ii. 239, 281, n.

Legitimate, who is, ii. 283

Legitimation, ii. 284

Le Grand Coustumier, i. 44, n., 101

Lessee of tenant for life, i. 259

Lessor of the plaintiff, iii. 619

Letter of statute, no rule for construction, i. 73

Letters, carriage of, ii. 568
detaining, iv. 135
franking, ii. 570, n.
of administration—see ADMINISTRATION.
of marque, ii. 492
of request, iii. 306
patent, i. 619; ii. 25
patent to companies, iii. 19
postage of, ii. 570
stealing, iv. 135
threatening, iv. 129, 251

Levant and couchant, i. 653, 680
distress of cattle, iii. 249

Levari facias, writ of, iii. 585

Levinz's Reports, i. 50

Levitical degrees, ii. 242

Lewdness, offence of, iv. 280

Levying money without consent of parliament, i. 165
war against the king, iv. 157

Lex et consuetudo parliamenti, ii. 339
Hostilia de furtis, iv. 118
Julia majestatis, iv. 151
mercatoria, i. 55
non scripta, i. 40—68
scripta, i. 68—80
talionis, iv. 14, 101

Liability, of agent, ii. 67
of indorser, ii. 119, 120
of innkeepers, ii. 85
of principal, ii. 67

Libel, ii. 343; iii. 191, n., 381; iv. 129, n., 258
apology for, iii. 383

Libel, blasphemous, iv. 208, 259
defamatory, iii. 382; iv. 258
immoral, iv. 259
in newspapers, iii. 382
in spiritual court, iii. 314
justification of, iii. 382
malicious, iii. 381; iv. 259
seditious, iv. 259
treasonable, iv. *ib.*

Liberam legem, losing, iv. 239, 413, 415

Liber judicialis of Alfred, i. 41; iv. 486

Liberi socmanni, i. 206

Liberties, ii. 630
and franchises, i. 661
bailiffs of, ii. 632, n.

Liberty, civil, ii. 466
injuries to, iii. 384
natural, ii. 466
of the press, iii. 190; iv. 260
personal, i. 144
political, ii. 466

Liberum maritagium, i. 244, n.
tenementum, i. 231

Licence, by justices, iii. 195
for hackney coach, iii. 181
marriage by, ii. 247, 256
of alienation, i. 199
of curate, ii. 695
of lunatic asylum, iii. 114, n., 118, n.
of mortmain, i. 455, 459
revocable, i. 230
to act plays, iii. 201
to convict, to be at large, iv. 452
to demise copyhold, i. 633
to go abroad, ii. 503
to kill game, ii. 26, 567
to manufacture patented article, ii. 31
to marry, ii. 752
to publish, iv. 260
to sell beer or cider, iii. 195
to teach youth, ii. 707

Licensed brokers, ii. 78, n.
houses for insane persons, iii. 118
pilots, iii. 156—158

Licensing Act (1872) iii. 195
committee, iii. 199

Licentia concordandi, i. 560

Liege homage, ii. 400
lord, ii. *ib.*

Lien, ii. 83
of landlord, iii. 584, n.
Lieutenancy, commission of, ii. 585
Lieutenant, lord, ii. 585, n., 603, n.
Life, i. 139—144
annuity, ii. 93; iii. 84
Assurance Companies Act (1870) ii. 136
estates for, i. 254
forfeiture of, for crime, i. 143; iv. 20, n., 481
injuries affecting, iii. 372
insurance, ii. 135
peerage, ii. 607, n.
policy, assignment of, ii. 136
Ligan, ii. 542; iii. 342
Light, right to, i. 160, 660; iii. 244
Lighthouse dues, iii. 161
Lighthouses, ii. 502; iii. 159—161
Lighting, parish, ii. 658
Lights, abandonment of, i. 693
Limbs, defence of, i. 140
Limitation as to prescription, i. 689
conditional, i. 299
in indictments, ii. 484; iv. 368—378
of actions, iii. 466—481
against justices, ii. 650
of claim to rent, iii. 471
of equitable claims, iii. *ib.*
of liability of innkeeper, ii. 85
of personal actions, iii. 475—480
of right of distress, iii. 470, 473
of right of entry, iii. 471
of the Crown, ii. 439
statutes of, iii. 459, n., 460, 470, 481
to uses, i. 369, 531, 551
Limited administration, ii. 198
banking companies, iii. 229
companies, iii. 21
liability of companies, iii. 23
owners' residences Act (1870), i. 253, n.
Limits of pilots' districts, iii. 158
Lineal ancestors, i. 411
consanguinity, ii. 194, 242
warranty, i. 489
Liquidated damages, ii. 113
Liquidation, proceedings in, ii. 175—see BANKRUPTS.
Liquidator, official, iii. 24
Lis pendens, iii. 667, n.
Literary and scientific societies, iii. 102
property, ii. 34; iii. 428
Litigious church, iii. 417
Littleton's Tenures, i. 52
Liturgy of the Church, ii. 703
Livery in deed, i. 508
in law, i. 508, 509
lying in, i. 511
of seisin, i. 176, 189, 231, 281, 364, 505, 508
or ousterlemain, i. 191
Livings in commendam, ii. 692
Lloyd's, ii. 129, n.
bonds, ii. 108, n.
Loan for the public service, ii. 574—578
of money, contract of, ii. 90; iii. 432
to trader secured on profits, ii. 103
Local actions, iii. 366
Acts of parliament, i. 70; iii. 480
allegiance, ii. 404
and personal Acts, i. 70
board of health, iii. 173
customs, i. 53, 54
Government Acts, iii. 173, 177
Board, iii. 49, 176, 177
Inclosure Acts, i. 655
lighthouse authorities, iii. 160
marine boards, iii. 150
taxes, i. 120; iii. 68, n.
venue, iii. 336, n., 501
Locatum, ii. 81, n.
Lock-up houses, ii. 655; iii. 123, n.
Locke King's Act, ii. 202, n.
Locomotives on roads, iii. 135, n., 180, n.
Lodger franchise, ii. 362
Lodgers, protected from distress, iii. 248
Lodging-houses for labouring classes, iii. 178, n.
Log book, iii. 153

Lollardy, iv. 205
London and Westminster sittings, iii. 514
Court of Bankruptcy, ii. 159; iii. 346
courts in, iii. 293, n.
customs of, i. 54, 56; ii. 211
franchises of city of, iii. 30
Gazette, ii. 104, 155, 156, 158, 161, 507, n., 731; iii. 280
institution, iii. 105, n.
jurors, iii. 525, n.
not included in Municipal Act, iii. 33
sanitary improvement of, iii. 178, n.
sittings, iii. 514
university, i. 20; ii. 359, 372; iii. 76
Long vacation, iii. 485
Lord and vassal, i. 174
chamberlain, iii. 201
chancellor—see CHANCELLOR.
chancellor of Ireland, ii. 709, n.
feudal, i. 174
high constable, iii. 335, n.
high steward on trial of a peer, iv. 302
court of, iv. *ib.*
of court of the university, iv. 325
lieutenant, ii. 585, 586, 603, n.
Lyndhurst's Act, iii. 80
mayor's court, iii. 293, n.
privy seal, ii. 458
steward of the king's household, court of, iv. 302
Tenterden's Act, ii. 56, 71; iii. 477
treasurer, iv. 159
warden of cinque ports, ii. 499, n.
Lords, house of, ii. 330; iii. 355, 357; iv. 302—307
justices, iii. 331
laws and customs of the, ii. 345
spiritual, ii. 328, 668; iv. 305
temporal, ii. 330
Lordship or manor, i. 214
Lost bill of exchange, iii. 542, n.
Lotteries, iv. 275
Lunacy Acts, ii. 511, 513
commissioners, iii. 118
masters in, ii. 512
Lunar month, i. 283
Lunatic asylums, iii. 112—120
Act (1853), iii. 113
borough, iii. 38, n., 112, n.
county, iii. 113—116
for criminals, iii. 116
in general, iii. 112
hospitals, iii. 119
cannot sit and vote in parliament, ii. 364
chargeable to a parish, iii. 114
committee of, ii. 513
contract by, ii. 62
criminal, iii. 116; iv. 25, 27, 67, 465
custody of, ii. 510, 511—see LUNATIC ASYLUMS.
excused in criminal cases, when, iv. 25, 27, 67, 465
hospital, iii. 119
in boroughs, iii. 38, n., 118, n.
jurisdiction of chancellor over, iii. 322
marriage by, ii. 241
meditating crime, iii. 115
orders for the confinement of, iii. 118
prisoner, iii. 116; iv. 26
sales by, i. 474
standing mute, iv. 393
visiting, ii. 548; iii. 113, 118
wandering at large, iii. 115
wife of pauper, ii. 267, n.
Lunatics, ii. 510—514
Luxury, laws against, iv. 282, n.
Lying in franchise, iii. 258
in grant or in livery, i. 511, 683
Lying-in hospitals, iii. 70, n.
Lyndewoode's Provinciale, i. 65, n.

M.

Machinery, riotous destruction of, iv. 250
Macnaughten's case, iv. 28. n.
Madhouses—see LUNATIC ASYLUMS.
Madman—see LUNATIC.
Madras, bishop of, i. 112
Magic, pretended, iv. 210

Magistrates, ii. 318, 619—658—see JUSTICES OF THE PEACE.
actions against, ii. 650; iii. 480
Magistrates' room, when an open court, iv. 336
Magna Charta, i. 63, 184, 196, 202; ii. 469, 472; iii. 337, 350, 644, 648; iv. 342, 458, 499
Mail, robbing the, iv. 136
Mainour, taking with the, iv. 373; 414
Main sea, i. 116
Maintenance of bastards, ii. 297
of children, ii. 288—293
of parents, ii. 296
of relations, iii. 56
of servants, ii. 231
of wife, ii. 267
offence of, ii. 231; iv. 236
Majora regalia, ii. 475
Making up the issue, iii. 515
Malacca, Acts relating to, i. 106, n.
Maladministration of public officers, iv. 187
of government, ii. 481
Mala in se, crimes, i. 38; ii. 486; iv. 11, 12
praxis, iii. 376
prohibita, ii. 486; iv. 11
Male or female in descents, i. 402, 415; ii. 417
Malfeasance, iii. 363
Malice, aforethought or prepense, iv. 70
express, iv. *ib.*
implied, iv. 72
Malicious arrest, iii. 384
burning, iv. 101.
injuries to property, iv. 138
arresting for, iv. 349
libel, iii. 381
mischief, iv. 138
prosecution, iii. 383
for rape, iv. 91
Malitia egreditur personam, iv. 73
præcognita, iv. 72
supplet ætatem, iv. 24, 88
Man, bishop of, i. 116
island of, i. 99
Manager of public company, frauds by, iv. 134
Manchester, bishop of, i. 116, n.; ii. 668
Mandamus, incidental to an action, iii. 634
peremptory, iii. 632
writ of, iii. 630—635; iv. 332, n.
Mandatum, ii. 81, n.
Manors, i. 214, 220
Mansion house, burglary in, iv. 105
Manslaughter, definition of, iv. 63
involuntary, iv. 64
punishment of, iv. 65
voluntary, iv. 63
Man-traps, iv. 96.
Manufacture, patent for, ii. 25
Manufactures, destroying, iv. 139
Manumission of villeins, i. 217
Marches, the, ii. 602
Marcheta, custom of, i. 212
Margaret, queen of Scotland, ii. 433
Marine assurance, iii. 435
boards, iii. 150
forces, ii. 593—598
insurance, ii. 128—139
stores, iv. 138, n., 194
Mariners of Trinity House, iii. 156
Marines, The Royal, ii. 597
Maritagium, i. 193, 208
Maritime causes, iii. 291, 341
courts, iii. 341—346
Mark, signing by a, i. 493
Market, i. 663; ii. 516; iii. 404, 411
clerk of the, iv. 323
fair and ferry, i. 663
in London, ii. 13
overt, ii. 53, 73
public, ii. 516
towns, i. 124
Marlbridge, statute of, iii. 253
Marque and reprisal, ii. 492
Marquess, ii. 602, 615, n.
Marriage, ii. 238—282
abroad, ii. 259
Acts, ii. 246

Marriage at office of registrar, ii. 251
between Jews, ii. 250, 251, n.
Quakers, ii. 250, 251, n., 258
by banns, ii. 247
by certificate, ii. 251, 256
by consul, ii. 260
by licence, ii. 247, 256
caveat against, ii. 248, n., 252, n.
contract in restraint of, ii. 61, n., 113
dispensations by the Pope, iv. 172
dissolution of, ii. 280
effect of, pending action, ii. 710
in chivalry, i. 193
in India, ii. 259, n.
in Scotland, ii. *ib.*
in socage, i. 208
is a contract, ii. 240
notice book, ii. 251
of bastards, ii. 300
of the royal family, ii. 259, 454
prohibited degrees in, ii. 242; iv. 172
promise in consideration of, ii. 56, 245
registration of, ii. 251, 258
registry of, iii. 232, 236
settlement, i. 332; ii. 274
by, iii. 52
title by, ii. 16, n.
when felonious, ii. 249, 257
when null and void, ii. 249, 257
without banns, ii. 249, 250
with wife's sister, ii. 244, n.

Married women—see FEME COVERT.
bankrupt, ii. 151
cannot contract, ii. 63
coercion of, by husband, iv. 32
debts of, before marriage, ii. 271
disabilities of, ii. 44, 63, 186, 269
effect of coverture on person, ii. 263
on property, ii. *ib.*
on transactions, ii. 268
freehold estate of, ii. 263
leasehold of, ii. 265

Married women, may effect a policy, ii. 136
paraphernalia of, ii. 266
Property Act (1870), ii. 45, n., 63, n., 136, 151, 187, 266, 267, 269, 271; iii. 83, 89
protection of, by court of equity, ii. 266—271
savings of, iii. 83

Marry, promise to, ii. 245

Marshal, lord, iii. 335, n.

Marshalling coat armour, iii. 335, n.
assets, iii. 457, n.

Marshalsea, court of, iii. 317, n.
steward of the, iv. 325

Martial, courts, ii. 590
law, ii. 592, n.

Mary, queen, ii. 431, 439; iv. 508

Master and servant, ii. 225—237; iii. 565
and Servants Act, ii. 239
of Common Pleas, iii. 573
of the Crown Office, iv. 374
of the Rolls, ii. 615, n.; iii. 330
power of, over servant, ii. 233
when liable for acts of servant, ii. 235

Masters in chancery, iii. 330, n.
in lunacy, ii. 512
of ships, iii. 151, 190
of the Common Law Courts, iii. 341

Matilda, empress, ii. 424

Matrimonial matters, jurisdiction over, iii. 304, 346

Matrimony, offences in regard to, iv. 277

Matrons, jury of, iv. 467

Maturity of bill, ii. 117

Mayhem, i. 140; iii. 373; iv. 79

Mayor's court of London, iii. 293, n.

Mayors, iii. 35

Meal, adulteration of, iv. 269

Means of preventing offences, iv. 290

Measure of punishment, iv. 14

Measures and weights, ii. 516
false, iv. 265

Meat, selling bad, iv. 268

Medical Act (1858), iii. 208
jurisprudence, i. 8
practitioners, irregular, iv. 69
profession, iii. 204—214
register, iii. 209

Medicine, compounding, iii. 207

Medietate, jury de, iii. 522, n.; iv. 327, 421

Medium of exchange, money as the, ii. 68, 520

Meeting houses, iii. 80
of creditors, ii. 156
of Parliament Act (1870), ii. 392
public, when unlawful, iv. 254

Members of parliament, ii. 347—381
disqualifications of, ii. 365—369
election of, ii. 349—381
may be bankrupt, ii. 366
privileges of, ii. 341
qualification of, ii. 365—369

Membrum pro membro, iv. 79

Memorandum of alteration of patent, ii. 34
of association, iii. 20

Memory, time of legal, i. 57, 685

Menaces, iii. 378—see THREATS.

Menial servants, ii. 277

Mensâ et thoro, divorce, ii. 277

Mensura Domini regis, ii. 518

Men traps, setting, iv. 96

Mercantile Marine fund, iii. 163
law, i. 55

Mercen-lage, i. 42; iv. 487

Merchant seamen, iii. 150
law, i. 55
Shipping Acts, ii. 544; iii. 147, 187
statute, i. 297, 309

Merchants, custom of, i. 55
protection of foreign, ii. 496

Mercheta, custom of, i. 212

Mere right, iii. 392

Merger, i. 327, 378
by operation of law, i. 319
in law, iii. 453

Merger of simple contract, i. 482; ii. 58

Merton, statute of, i. 654; ii. 285

Mescroyantz, iv. 202, n.

Mesne lords, i. 186
process, iii. 489, n.
profits, i. 294; iii. 623, 626
writ of, iii. 410, n.

Metals, dealers in, iv. 229

Metric system, ii. 519

Metropolis, Buildings Acts, iii. 179, n.
management of, iii. 178, n.
poor of the, iii. 179, n.
prevention of disease in, iii. 174, n.
streets in, iii. 132, n.

Metropolitan commissioners in lunacy, iii. 118
county courts, iii. 286, n.
interments, iii. 179, n.
magistrates, ii. 367, 644, n., 645, n.
police Acts, ii. 644, n.; iv. 335, n., 349, n.
sewers, iii. 179, n., 296, n.
smoke furnaces, iii. 179, n.
stage carriages, iii. 180, n.
supply of water, iii. 179, n.
traffic, iii. 179, n.

Michel-gemote, ii. 319

Michel-synoth, ii. *ib.*

Middlesex, bill of, iii. 333, n.
juries, iii. 517
and London sittings, iii. 514
registration of, i. 613
sessions, iv. 320

Military asylum at Chelsea, ii. 593
courts, i. 67, n; iii. 335, n.
feuds, i. 179, 188
forces, ii. 582—593
hospital, ii. 593
savings banks, iii. 81, n.
tenures, i. 188, 204
testament, ii. 593

Militia, ii. 498, 583, 587; iii. 86, n.

Millbank prison, iii. 125

Millponds, injuring, iv. 140

Minas, duress per, i. 141; iv. 33

Mines, iii. 178, n.

Mines, injuries to, iv. 140
prerogative as to, ii. 549
Ministerial office of coroner, ii. 642
Ministers, ii. 752
dissenting, ii. 707
responsibility of, ii. 481
the cabinet, ii. 458
Minora regalia, ii. 475
Minor canons, ii. 675
Minority—see AGE.
Mint, the royal, ii. 523; iv. 227, n.
Mirrour, The, i. 51; iii. 42
Misadventure, homicide by, iv. 52
Miscarriage, procuring, i. 140; iv. 83
Miscellaneous contempts, iv. 199
jurisdiction of county court, iii. 292, n.
Mischievous animals, iii. 375
Miscreant (or sceptic), iv. 202
Misdemeanor, iv. 7, 344
by bankrupt, ii. 159, 160
compounding, iv. 234
error in proceedings for, iv. 464
plea of coverture in, iv. 32
Misdirection of judge, iii. 558
Mise on a mere right, iii. 392, n.
Misfeazance, iii. 363
Misfortune, when excuse for crime, iv. 30
Misgovernment of the country, ii. 478—484
Misjoinder of counts, iii. 509, n.
of parties, iii. 493, n.
Misnomer, effect of, iv. 369, 400
plea of, iv. 400
Misprision of felony, iv. 233, 302
of treason, iv. 165, 302, 426
Misrepresentation, iii. 427
in a policy, ii. 138.
Mistake, when excuse for crime, iv. 30
Misuser, forfeiture for, i. 693
Mitigation of damages, iii. 383
Mitter le droit, i. 520
l'estate, i. *ib.*
Mixed actions, iii. 361
government, i. 32, 33
larceny, iv. 123
subjects of property, ii. 214
tithes, ii. 722
Models, copyright in, ii. 41
Modus decimandi, ii. 728; iii. 311
levandi fines (18 Edward I.), i. 560
rank, ii. 729
Moerda (murder), iv. 66
Molesting traders, iv. 267
workmen, iv. 241
Molliter manus imposuit, iii. 375
Monarchy, i. 31
elective, ii. 415
Monasteries, ii. 666, 678—see RELIGIOUS HOUSES.
Money bill, ii. 349, n.
bond, ii. 111
counterfeiting, iv. 161, 189
counts, iii. 432
due on account stated, iii. *ib.*
has no ear-mark, ii. 53, n.
interest on, ii. 90—98
lent, ii. 90; iii. 432
may be seized on a fi. fa., iii. 584
of the realm, ii. 520—524
orders, iv. 136, n., 144, n.
paid, iii. 432
payment of, into court, iii. 383, 505
received to use of plaintiff, iii. 432
Monk, i. 142
Monmouth, county of, i. 85
Monopolies, statute of, ii. 25, 35
Monopoly, offence of, ii. 25; iv. 266
Morro Velho, marriages in, ii. 260, n.
Monster cannot be heir, i. 437
Monstrans de droit, iii. 656
Month, calendar, i. 283
lunar, i. *ib.*
Monuments, ii. 222
Moravians, ii. 338, n.; iii. 536, n.; iv. 336, n.
Mort d'ancestor, iii. 410, n., 484
Mortgage, i. 304; iii. 451, 453, 473
creditor in bankruptcy, ii. 172

Mortgage debentures, i. 695, n.; iii. 186, n.
equitable, i. 305. n.
of tolls, iii. 141
payment of, out of personal estate, ii. 202, n.
Mortgagee out of possession, i. 305, 308
Mortgagor, action by, iii. 453
Mortmain, i. 359, 456, 461, 462; iii. 17, 21; iv. 501
relaxation of, i. 460
Mortuaries, ii. 741
Mortuo vadio, estate in, i. 304
Mother churches, i. 118; ii. 746
when entitled to custody of child, ii. 295—297
when guardian, ii. 296
Motion by way of interpleader, iii. 590
for new trial, iii. 558
Motions in court, iii. 627
Mountebanks, iv. 272
Moveable terms, iii. 481—486
Moveables, property in, i. 157; ii. 2, 4
right to dispose of, by will, i. 163
Mulier puisné, i. 438
Municipal Act, iii. 33
corporations, i. 124, 474; iii. 30, n., 31—41
elections, ii. 371, n.; iii. 35, n.
law, i. 25, 35
Murder, iv. 66, 199, 370
abroad, i. 134, n.
attainder for, iv. 457
attempt to, iv. 78
by perjury, iv. 68, n., 244
definition of, iv. 66
execution for, iv. 75
in case of insanity, iv. 26
pardon of, iv. 474
punishment of, iv. 74—78
where stroke in England and death abroad, or vice versâ, 364
Murdre, iv. 66, n.
Murdrum, iv. 66
Museums in boroughs, iii. 39, n.
Musical performance, ii. 41
Muta canum, ii. 674, n.
Mute, standing, iv. 390
Mutilation, iii. 373; iv. 79
Mutiny Act, ii. 589; iv. 389, n.
in the navy, ii. 598
Mutual conveyances, i. 516
promises, ii. 55, 60
Mystery of apothecaries, iii. 206

N.

Name of corporation, iii. 11
National Church, i. 97, n.; ii. 524
debt, ii. 574; iv. 518
amount of, ii. 575
Nations, law of, i. 24
offences against, iv. 215
Nativi, i. 217
Natural affection, i. 533
allegiance, ii. 403
liberty, i. 141; ii. 466
life, i. 142, 256
Natural-born subject, ii. 406
Naturalization, i. 134, 441
Act (1870), i. 441, 477; ii. 405, 409, 411; iv. 421
by act of parliament, ii. 410, 411, n.
by certificate, ii. 410
Nature, crime against, iv. 92
law of, i. 21
Naval coast volunteers, ii. 598, n.; iii. 86, n.
discipline Act, ii. 596; iv. 195, 197, 209
medical supplemental society, ii. 598, n.
stores, iv. 194
Navigable rivers, i. 671
Navigation Act, iii. 145, 147—see TRADE AND NAVIGATION.
companies, ii. 88 n.
of British ships, iii. 148
Navy, ii. 593—598
founding of the, iv. 487
number of ships in, ii. 594, n.
Ne admittas, iii. 609, n.
disturba pas, iii. 610
exeat regno, i. 148; ii. 504
injustè vexes, iii. 410, n.
unques accouple, iii. 607
unques seisie que dower, iii. *ib.*

Necessaries for children, ii. 62, 307
for wife, ii. 270

Necessitas culpabilis, iv. 57

Necessity, when excuse for unlawful act, iv. 31

Neglect by master, ii. 231

Negligence, different kinds of, ii. 82, n.
escape of felons by, iv. 228
fire caused by, ii. 235
homicide by, iv. 57
in bailee, ii. 82
in fellow servant, ii. 232
injuries by, iii. 375
of public officers, iv. 246

Negotiability of a bill, ii. 116
of a note, ii. 124

Negotiable instruments, ii. 53

Negro slavery, i. 113; ii. 226

Neife, i. 217

Nembda, iii. 549, n.

Nemo est hæres viventis, i. 389
potest exuere patriam, ii. 404, n.

Nephew or uncle in descent, i. 406

Net profits, ii. 102, 103, n.

Never indebted, plea of, iii. 504

New assignment, plea of, iii. 507
boroughs, creation of, ii. 358
Brunswick, Acts relating to, i. 105, n.
Code of Justinian, i. 63
panel of jury, iv. 424
parishes Acts, ii. 750
South Wales, Acts relating to, i. 105, n.
trial, iii. 558; iv. 434
advantages of, iii. 560
when granted, iii. 561
Zealand, Acts relating to, i. 105, n.

Newfoundland, Acts relating to, i. 105, n.

News, spreading false, iv. 257

Newspapers, iii. 193, n.
libels in, iii. 382
post, ii. 570

Next friend, suing or defending by, iii. 271, n.
of kin, ii. 193, 196, 208, 209

Nient culpable, iv. 406, n.

Night, house-breaking by, iv. 104—111
poaching, ii. 20, n.; iv. 285—287

Nil dicit, judgment by, iii. 568

Nisi prius, commission of, iii. 350, 352; iv. 314
court of, iii. 352, 485
record, iii. 515
trial at, iii. 514

Nitro-glycerine, ii. 86, n.; iv. 276, n.

Nobility, ii. 328, 601—618—see TITLES.

Nobleman, when tried by his peers, ii. 608

Nolle prosequi, iii. 568

Nolumus leges Angliæ mutare, ii. 285, n.

Nominal damages, iii. 367
partner, ii. 102

Non assumpsit, iii. 503

Non cepit, plea of, iii. 615

Non-claim, bar by, i. 565

Non compos, ii. 510—see LUNATICS.
devise by one, i. 595
feoffment by a person, i. 475

Non-conformist, ii. 706

Non-conformity, ii. 705

Non-delivery of goods sold, iii. 431

Nonfeazance, iii. 363

Non intromittant clause, iii. 38, n.

Nonjoinder of parties, iii. 493
of partners, ii. 101

Non obstante clause, i. 460
veredicto, iii. 558, 564

Non-payment of ecclesiastical dues, iii. 312
of church rates, iii. 313

Non pros, judgment of, iii. 614

Non-residence of clergy, ii. 689

Nonsuit, iii. 550, 568
motion to enter, iii. 558, n.
motion to set aside, iii. *ib.*
under Judicature Act (1873), iii. 551, n.

Non-trader bankrupt, ii. 150

Non-user, forfeiture for, i. 693; ii. 623

Norfolk Island, Acts relating to, i. 106, n.

Norman Conquest, i. 387; ii. 422, 423; iv. 490

Norman jurisprudence, i. 43, 44; iv. 493
Not guilty, iii. 503; iv. 405
Notaries, public, iii. 215, n.
Note of a fine, i. 561
of hand, ii. 123
Notice of act of bankruptcy, ii. 155
of action, ii. 650
of dishonour, ii. 119, n., 121
of marriage, ii. 251, 257
of trial, iii. 518
short, iii. 518, n.
to admit, iii. 540
to creditors, ii. 204, n.
to pay off mortgage, i. 305, n.
to produce, iii. 543
to quit, i. 291, 292
Nottingham, Earl of, iii. 329
Nova Scotia, Acts relating to, i. 106, n.
Nova statuta, i. 68, n.
Novel disseisin, writ of, iii. 410, n., 484
Novels of Justinian, i. 62, 63
Nudum pactum, ii. 59, n.
Nuisance, iii. 402
abatement of, iii. 244
common, iv. 270
injunction against, iii. 405
private, iii. 135, n., 244, 402
public, iii. 402; iv. 270
remedies for, iii. 405
Removal Act (1855), iii. 174; iv. 277
to corporeal hereditaments, iii. 402
to incorporeal hereditaments, iii. 404
Nulla bona, return of, iii. 585
Nulli vendemus rectum vel justitiam, ii. 472; iv. 500, n.
Nullity of marriage, ii. 282
Nullum tempus occurrit regi, ii. 483; iii. 469
Nunc pro tunc, judgment, iii. 572
Nuncupative will, ii. 188, 593, 597
Nurture, guardianship for, ii. 309
age for, ii. 295

O.

Oath, affirmation in lieu of, ii. 338; iii. 315, n., 529, n., 535, 536, n.; iv. 242, n., 336, n., 361, n.
against bribery, ii. 373, n.
Oath, by members of parliament, ii. 338
coronation, ii. 307
declaration in lieu of, ii. 623
ex officio, iii. 315, n.
in what form binding, iii. 535
judicial, ii. 622
of abjuration, allegiance and supremacy, ii. 338, 401
of allegiance (present), ii. *ib.*
of fealty, i. 177
of jurymen, iii. 529; iv. 424
of supremacy, ii. 338, 401
of witnesses, iii. 535
on accepting office, ii. 338
profane, iv. 209
promissory, ii. 402, 622
under compulsion, iv. 198
unlawful, iv. 197
Oblations, ii. 740
Obligation of laws, i. 38
Obligor and obligee of a bond, ii. 108
Obscene books, &c., iv. 281
Obsolete statutes, i. 69, n.
Obstructing process, iv. 226
revenue officers, iv. 263
workmen, iv. 241
Obtaining property by false personation, iv. 146
by false pretence, iv. *ib.*
Obventions, ii. 741
Occupancy, colonies gained by, i. 682
common, i. 448
special, i. 449
title by, i. 157, 448, 682; ii. 16—24
Occupation, franchise by, ii. 353, 361, 362; iii. 34
Occupier rated to relief of the poor, iii. 64
inhabitant, ii. 362
Octo tales, iii. 528
Œconomy, laws of social, iii. 1
Offences against laws of nations, iv. 215—222
police, iv. 268
property, iv. 99
public economy, iv. 268
health, iv. *ib.*
justice, iv. 223
peace, iv. 248
trade, iv. 262

Offences against religion, iv. 201—214
the government, iv. 149
the person, iv. 46
in what county to be tried, iv. 364—367
means of preventing, iv. 290
relating to the coin, iv. 188
triable at quarter sessions, iv. 317

Offensive trades and manufactures, iii. 403; iv. 275

Office, definition of, ii. 620
found, iii. 661
how conferred, ii. 621
how forfeited, ii. 623
inquest of, iii. 659
ministerial, ii. 621
not a tenement, when, ii. 620, n.
oath of, ii. 622
of land registry, i. 694
of trust, ii. 621
refusing to serve, iv. 285
royal prerogative, as to, ii. 514
selling public, ii. 621; iv. 188
settlement by executing an, iii. 55
swearing into, ii. 622
vacated by demise of Crown, ii. 623

Officers, arrest by, iv. 344—353.
chief, ii. 368, n.
killing, iv. 72, 159
of health, iii. 177
of State, ii. 402, 455—463
public, negligence of, iv. 246

Offices, creation of, by Crown, ii. 514
duty on, ii. 572
selling, ii. 621; iv. 188

Official assignee—see TRUSTEE.
dignities, ii. 612
house of residence, ii. 713
liquidator, iii. 24
log book, iii. 153
oath, ii. 622
referees, iii. 556
titles, ii. 612, 615, n.
trustees of charities, iii. 76

Officina justitiæ, iii. 322, n.

Old Bailey sessions, iv. 316
metals, dealers in, iv. 229, n.

Oleron, laws of, ii. 542; iii. 343

Opening the pleadings, iii. 529

Operation of a judgment, iii. 573
of a statute, i. 72

Oppression by judges, iv. 246

Options, ii. 669

Oral defamation, iii. 377
evidence in Chancery, iii. 599
lecture, ii. 40

Ordained ministers, iv. 209

Ordeal, trial by, iv. 407, 490

Order and disposition of bankrupt, ii. 155, 161
bill payable to, ii. 116
for confinement of lunatic, iii. 114
in council, iii. 145, 169, 285.
of discharge of bankrupt, ii. 155, 161
of removal of pauper, iii. 58

Orders, holy, ii. 660

Ordinances, reviling the holy, iv. 208

Ordinary, judge in, ii. 239
licence to marry from the, ii. 247
neglect, ii. 82, n.
revenue, ii. 528
the, ii. 182, n., 191

Ordination, ii. 671
for foreign parts, ii. 668, n.

Ore tenus, testimony, iii. 548, n.

Ores, stealing, iv. 122, n.

Orfordness, iii. 158

Origin of equity, i. 80
of property, i. 158
of the common law, i. 40

Original jurisdiction of Archbishop of Canterbury, ii. 669
deed, i. 483
writ, iii. 323, 489, 605, 608

Orphans, court of, ii. 313

Ostensible partner, ii. 104

Ostium ecclesiæ, dower ad, i. 270, 277

Ouster, iii. 385—398
former remedies for, iii. 389
of chattels real, iii. *ib.*
of incorporeal hereditaments, iii. 385
of the freehold, iii. 386
of tithes, iii. 398
present remedies for, iii. 396

Ousterlemain, i. 191; iii. 657

Out-door relief on condition of educating child, iii. 108
Outlawry, iii. 495, n.; iv. 383, 465
after judgment, iii. 495, n.; iv. 383, n.
of members of parliament, ii. 342
reversal of, iv. 465
who exempted from, iv. 383, n.
Outrages in courts of justice, iv. 224
Outstanding terms, i. 380
Overdriving cattle, iv. 283
Overseer, single, iii. 43, n.
Overseers of the poor, ii. 230, n., 354; iii. 43, 62
assistant, iii. 64
bound to render account, iii. 67
duty of, iii. *ib.*
to give temporary relief, iii. 62
who exempted from being, iii. 43, n.
Overt act, essential to crime, iv. 22
in conspiracy, iv. 240
in treason, iv. 154
market, ii. 53, 73
pound, iii. 255
Owner, when liable to poor rate, iii. 65, n.
Oxford, University of, i. 9, 16, 19; iii. 6, 27, 76, 192, 300; iv. 326
constitution of, iii. 6, n.
Oyer and terminer, commission of, iii. 352; iv. 313
Oyez, meaning of the term, iv. 406, n.
Oysters, stealing, iv. 122, n.

P.

Paintings, copyright in, ii. 41
Pais, conveyances in, i. 502
matter in, i. *ib.*
trial per, iii. 513—see JURY, TRIAL BY.
Palace court, iii. 317, n.
Palatine counties, i. 129, 133
courts, iii. 347—349
Palmer, Sir Geoffrey, i. 382
Palmistry, iv. 289, n.
Pamphlets, iii. 193, n.
Pandects, i. 11, n., 63
Panel, iii. 516; iv. 361, 424
Papal encroachments, iv. 174, 181
Paper book in demurrer, iii. 511
Papirius, i. 63
Papist livings, iii. 419
trusts, discovery of, iii. *ib.*
Papists, assumption of ecclesiastical titles by, iv. 186
relief of, ii. 710
treasons by, iv. 163, n.
Paramount, lord, i. 186
Paraphernalia, ii. 266
Paravail, tenant, i. 186
Parceners, i. 347
Pardon, ii. 506; iv. 442, 466—477
allowance of, iv. 476
by warrant, iv. 473
conditional, iv. 475
constructive, iv. 473
effect of, iv. 476
for discovering accomplices, iv. 395
free, iv. 473
general, iv. *ib.*
not pleadable to impeachment, ii. 599; iv. 301, 471
pleading a, iv. 301, 404
under the great seal, iv. 473
Parens patriæ, ii. 181, 508
Parent and child, ii. 225, 283—301; iii. 439
consent of, to marriage, ii. 248, 252
duty of, ii. 288
power of, ii. 293—see CHILD.
Parentage, settlement by, iii. 52
Pares curtis, i. 265
Pari delicto, potior est conditio possidentis, ii. 139
Parish, i. 117
apprentices, ii. 230; iii. 54, n.
clerks, ii. 700
district, ii. 751
for ecclesiastical purposes, ii. 747
land, iii. 17, n., 396, n.
meeting, i. 120

Parish offices, i. 121
origin of, i. 119
vestry, i. *ib.*

Parishes, ii. 744
consolidation of, iii. 50
new, ii. 741, 750

Parishioners, when exempted from toll, iii. 140

Parkhurst Prison, iii. 126

Parks, i. 670; ii. 535, n.

Parliament, ii. 318—394; iv. 299, 497, 503
adjournment of, ii. 390
annual, ii. 326
constituent parts of, ii. *ib.*
contempt of, ii. 344
dissolution of, ii. 392
duration of, ii. 393, 394
election of members of, ii. 349—381
high court of, iv. 299
impeachment in, iv. *ib.*
law and custom of, ii. 335
manner and time of convening, ii. 322
meaning of the word, ii. 319
members of, ii. 333, 366
mode of making laws in, ii. 382
power of, ii. 336
privileges of, ii. 340—345
prorogation of, ii. 390
rolls, ii. 384
voting in, ii. 382

Parliamentary boroughs, i. 125, n.; iii. 33, n.
Elections Act (1868), ii. 378; iii. 334
grant for education, iii. 105
impeachment, ii. 481; iv. 299, 425
papers, ii. 344
representation, ii. 349, 350
trains, iii. 185, n.

Parochial Assessment Act, iii. 66
chapels, ii. 745
relief, principle of, iii. 46

Parol assignment, ii. 49
contract, ii. 55
evidence, iii. 531

Parricide, iv. 76

Parson, how deprived, ii. 691
method of becoming, ii. 677, 684
why so called, ii. 677

Pars rationabilis, doctrine of, ii. 180, 183, 292

Partial loss, ii. 132

Partiality of judges, iv. 246

Particular actions, iii. 605—626
customs, i. 53
estate, i. 315
lien, ii. 83
tenant, i. 463

Particulars of demand, iii. 492, 501, n.

Parties to an action, iii. 493
to a deed, i. 483
to a fine, i. 564
to the cause, iii. 534

Partition Act (1868), i. 345, n.
compulsory, i. 344, 349
deed of, i. 516
of coparcenary, i. 349
of estate, i. 355
of joint tenancy, i. 344
of tenancy in common, i. 355
suit, i. 344

Partner, authority of, ii. 101
bankruptcy of, ii. 150
dormant, ii. 102
liability of each, ii. 104
ostensible, ii. *ib.*

Partners, remedies against each other, ii. 104; iii. 433

Partnership, ii. 99
managed by equity courts, i. 82
new Act as to, ii. 103
proper jurisdiction over, i. 86
trading, ii. 14, 99, n., 101, n.

Partridge, a fowl of warren, i. 670

Partus sequitur ventrem, ii. 23

Passenger ship, iii. 158, 188
steamers, iii. 187

Passengers Acts, iii. 188—190

Passive trusts, i. 372

Passports, ii. 494; iv. 217

Pasture, common of, i. 649

Pataleon Sa's case, ii. 487, n.

Patent, ambiguity, i. 500
how obtained, ii. 25—34
infringement of, ii. 32; iii. 429
law Acts, ii. 28
letters, i. 619; ii. 25
of precedence, iii. 274
peers by, ii. 606, 607
right, ii. 9, 25, 31
rolls, i. 619

Patentee, protection of, ii. 33

Paternal or maternal line in descent, i. 413, 417

Patriam, trial per—see JURY, TRIAL BY.

Patria potestas, ii. 293

Patroclus, iv. 58, n.

Patronage, disturbance of, iii. 414
of the crown, ii. 599

Patronatus, ii. 715

Patterns, copyright in, ii. 41
post, ii. 570

Pauper, casual, iii. 55
education of, iii. 107
insane, iii 56, n., 113
maintenance of, by relations, iii. 56
relief to wife of, ii. 267, n.
refusing to work, iii. 57
suitors, iii. 576
schools, iii. 107
when not removable, iii. 60

Pauperis, suing in formâ, iii. 576

Paving Acts, iii. 132

Pawnbrokers Act (1872), ii. 74, 81

Pawnee—see BAILEE.

Payee, ii. 115

Payment by joint debtor, iii. 479
of curate, ii. 696
of money into court, iii. 383, 505
of seamen, iii. 152
where presumed, iii. 546, n.

Pay not assignable, ii. 45
of the navy, ii. 598, n.

Peace and war, prerogative as to, ii. 490, 491
breach of the, ii. 605; iv. 248, 290
clerk of the, iv. 320
commission of the, iii. 352
conservator of the, ii. 641

Peace, justices of the, ii. 642—see JUSTICES.
offences against the, iv. 248
recognizance to keep the, iv. 290—295

Peculatus, iv. 187

Peculiars, court of, iii. 306

Pecuniary consideration, i. 534
only matter of form, i. 536
satisfaction in manslaughter, iii. 370; iv. 66, n.

Pedigree, falsification of, iv. 147.
proof of, iii. 236, 544

Peerages, different classes of, ii. 330, n.
for life, ii. 607, n.

Peeresses, ii. 609; iv. 302

Peers, ii. 330, 345, 347, 455, 601—612; iii. 355, 357; iv. 302, 305, 471
bankrupt, ii. 347, 612
by patent, ii. 605
by tenure, ii. 604
by writ, ii. 605
cannot vote, ii. 465
election of Scotch and Irish, ii. 331, 366, n.
evidence of, iii. 598
free from arrest, ii. 341
for Ireland, i. 97
for life, ii. 607, n.
for Scotland, i. 88
how created, ii. 514, 606
how deprived, ii. 611
house of, ii. 328, 345
not eligible to serve in house of commons, ii. 366
privileges of, ii. 345—347, 456, 606—612
protest of, ii. 346
proxies of, ii. *ib.*
right to audience of king, ii. 456
spiritual, ii. 328
trial of, iv. 302, 305, 383, n., 416

Peine forte et dure, iv. 391, 518

Penal action, iii. 439, 479
servitude, i. 148, n.; iii. 125—127; iv. 441—453
escaping from, iv. 229
statutes, i. 70; iii. 479; iv. 450

Penalties, contracts secured by, ii. 111

Penalty of a bond, ii. 108, 111—114

Penance, dispensation of, iv. 172

Pendente lite, administration, ii. 197

Penitentiary at Millbank, iii. 125

Pensions, i. 648, 649, n.
duties on, ii. 572
receiving from foreign prince, iv. 195, n., 199

Pensioners, on the civil list, ii. 516
royal, ii. 367

Pentonville prison, iii. 127

People, relation of sovereign to, ii. 395

Per capita, distribution, i. 407; ii. 211

Peremptory challenge, iv. 422
mandamus, iii. 632
pleas, iii. 502

Perfection of the sovereign, ii. 478

Performance of contract, when excused, ii. 64
specific, iii. 461

Perjury, iv. 242—244
evidence required to convict of, iv. 427
in capital cases, iv. 68, n, 244
punishment of, iv. 243, 244
subornation of, iv. 243

Permissive waste, i. 257, 288, n., 290, 293; iii. 408

Per my et per tout, i. 341

Per pais, iii. 513—see JURY, TRIAL BY.

Per patriam, iv. 416—see JURY, TRIAL BY.

Perpetual curate, ii. 682

Perpetuation of testimony, iii. 463

Perpetuity, doctrine of, i. 471, n., 552, 554; ii. 13

Per quod consortium amisit, iii. 439
laying action with a, iii. 372
servitium amisit, iii. 442

Persecution, religious, ii. 707

Person, committee of the, ii. 513
definition of, iii. 470, n.
injuries to the, iii. 378
offences against the, iv. 46—98
of the Queen, attempts to injure, iv. 423
stealing from the, iv. 124

Personal actions, iii. 361, 363
Acts of parliament, i. 70; iii. 480
annuity, i. 299
bequest, i. 604
chattels, i. 281; ii. 2
estate, i. 165, n.

Personal estate of bankrupt, ii. 165, n.
goods, larceny of, iv. 114
liberty, i. 139, 145
property, ii. 2
injuries to, iii. 373
in action, ii. 10
in possession, ii. *ib.*
number of owners in, ii. 14
quantity of interest in, ii. 12
title, by assignment, ii. 49
by bankruptcy, ii. 145
by contract, ii. 54—see CONTRACT.
by gift, ii. 44—see GIFT.
by invention, ii. 25
by occupancy, ii. 16
by will and administration, ii. 178
real and mixed actions, iii. 361
representatives, ii. 198
rights, i. 136, 138
security, i. 139
service, iii. 494
things, i. 167; ii. 1
tithes, ii. 722

Personation, false, iv. 146
of master of a servant, iv. 270
of owner of stock, iv. 146
of voters, ii. 373, n.

Persons capable of committing crimes, iv. 21

Per stirpes, distribution, i. 407; ii. 211
succession, i. 407

Per verba de præsenti, marriage, ii. 246

Petition against parliamentary election, ii. 379
de droit, iii. 657
for damages in adultery, iii. 438
for prolongation of patent, ii. 32
in bankruptcy, ii. 153, 154
remedy by way of, iii. 487, n.

Petition of Right (3 Car. I.), i. 145, 166; ii. 469; iv. 513

Petitioning creditor, ii. 154
Crown or parliament, ii. 474
tumultuous, iv. 255

Petit larceny, iv. 119
serjeanty, i. 210
treason, iv. 77, 150, n.
abolished, iv. 77

Petroleum, iv. 276, n.

Petty bag office, iii. 322
constables, ii. 654
larceny, iv. 119
sessions, ii. 649; iii. 67; iv. 333

Pews, iii. 314

Pharmaceutical Society, iii. 207, n.

Pharmacopœia, British, iii. 209, n., 213, n.

Pharmacy Act (1868), iii. 208

Pheasant, a fowl of warren, i. 670

Photographs, copyright in, ii. 41

Physicians, college of, iii. 6, 9, 26, 205, 213
suing for fees, iii. 212

Pickage, i. 664

Pickpockets, iv. 125

Pictures, maliciously injuring, iv. 140

Piedpoudre, court of, iii. 317, n.; iv. 323

Piers and harbours, ii. 500, 501

Pigeons, stealing, iv. 121, n.
tame, ii. 6

Pignori acceptum, ii. 21, n.

Pillory, iv. 443, n.

Pilotage, laws relating to, iii. 156—159
authorities, iii. 156

Pilot boats, iii. *ib.*

Pin money, ii. 274

Piracy, iv. 219
admiralty jurisdiction in, iii. 345
of works, ii. 38

Pirates, recapture from, ii. 18, n.

Piscary, common of, i. 653

Pitt Press, iii. 192

Pixing the coin, ii. 523, n.

Place of public amusement, iii. 194
of settlement, removal to, iii. 57

Plagiarii, iv. 94, n.

Plague, provisions respecting, iii. 168

Plaintiff, suing in the name of a fictitious, iv. 235

Plaint in county courts, iii. 288

Plants, injuries to, iv. 140
stealing, iv. 122, n.

Play, stage, ii. 40

Plea, a demurrer not a, iv. 397
declinatory, iv. 397, n.
dilatory, iii. 502; iv. 400
equitable, iii. 504, n., 506, n.
in abatement, iii. 502; iv. 400
in bar, iii. 503; iv. 401
in bar of execution, iv. 476
in discharge, iii. 503
in equity, iii. 597
in justification, iii. 503
in suspension, iii. 502
of benefit of clergy, iv. 398—see BENEFIT OF CLERGY.
of defendant, iii. 502, n.
of misnomer, iv. 400
of not guilty, iv. 398, 405, 419
of sanctuary, iv. 397, n.
peremptory, iii. 502
puis darrein continuance, iii. 508, 509
side of the exchequer, iii. 339
special, iii. 503; iv. 401
to an indictment, iv. 390
to the jurisdiction, iii. 502, 503; iv. 398
upon scire facias, iii. 322, n.

Pleading and demurring at the same time, iii. 510; iv. 399, n.
departure from, iii. 507
equitable, iii. 504, n., 506, n.
over, after demurrer, iv. 399
after special plea, iv. 405

Pleadings, the, iii. 497—512
dispensing with, iii. 567
opening the, iii. 529

Pleas, court of, at Durham, iii. 349
in dower, iii. 607
in quare impedit, iii. 610
in replevin, iii. 615
of the Crown, iv. 2

Pleasure of the king, imprisonment during the, iv. 184

Pledge, estates in, i. 297, 304
of goods by agent, ii. 79

Plegii de prosequendo, iii. 422, n.
de retorno habendo, iii. *ib.*

Plena probatio, iii. 538, n.

Plenarty, iii. 415, 611

Plene administravit, ii. 204
Plenum dominium, i. 506
Plough, beasts of, when distrainable, iii. 251
Ploughbote, i. 256, 288
Ploughland, i. 187
Plowden's Reports, i. 50
Plundering wreck, ii. 545; iv. 251, n.
Pluralities, ii. 691
Pluries capias, iv. 383
Poaching, ii. 20
by night, ii. 20, n.; iv. 285—287
Pocket, picking the, iv. 125
sheriff, ii. 626
Poisoning, iv. 68
Poisons, sale of, iii. 208, n.
Police, ii. 651—658; iii. 140, n.
county, ii. 656
magistrates, iv. 333, n.
offences against the public, iv. 268
superannuation fund, ii. 657, n.
supervision, iv. 452
Policies in blank, ii. 129
of assurance, ii. 127—139; iii. 22, n., 435
court of, iii. 317, n.
Policy, fire, ii. 135
life, ii. *ib.*
Political or civil liberty, ii. 466
Poll, deed, i. 483
duration of, ii. 370
Polling at elections, ii. 369—372
Polls, challenge to the, iii. 523
Polygamy, ii. 241; iv. 278
Pondus regis, ii. 518
Pone, writ of, iii 280
Poor, iii. 42—69
casual, iii. 56, 57
chargeable, iii. 45, 56
education of the, iii. 107
in extra-parochial places, iii. 44, n.
Irish, iii. 57
laws, i. 120, 141
livings, ii. 461
overseers of, iii. 43
rate, i. 120; iii. 44, 63—69
Poor rate, allowance of, iii. 66
appeal from, iii. 67
relief of, iii. 62
removal of, iii. 45, 57—61
Scotch, iii. 57
settled, iii. 44, 56
who compelled to maintain, iii. 56
Poor law Acts, iii. 48, n., 49, n.
Amendment Act (1834), iii. 48, 49, n., 55, 63, 66
board, iii. 49
commissioners, iii. 49
education, iii. 107
inspectors, iii. 50
relief, ii. 291
unions, iv. 171
Pope Nicholas' taxation, ii. 532
diplomatic relations with, ii. 485, n.
Popery, declaration against, ii. 401
history of its encroachments, iv. 168—185
Popish parent, ii. 291, n.
Popular action, iii. 436
Population of Great Britain and Ireland, i. 134, n.
Portland, convicts at, iii. 126, n.
Harbour, ii. 501, n.
Isle of, i. 98
Port of Dublin corporation, iii. 160
Ports and havens, ii. 499
Portsmouth, convicts at, iii. 126, n.
Positive evidence, iii. 545
Position of signature to will, i. 599, n.
Posse comitatus, ii. 624; iv. 254
Possessio fratris, i. 421
Possession, actual right of, iii. 391
apparent right of, iii. 390
estates in, i. 313
naked, i. 314; iii. 390
of premises held over, i. 294, 295
property in, ii. 10
right of, i. 154
Possessions, colonial, i. 101
Possessory actions, iii. 390
Possibility, i. 229, 328
common, i. 328
coupled with an interest, i. 229, n.
double, i. 329

Possibility of reverter, i. 243, 315, n.
remote, i. 328
upon a possibility, i. 329

Postea, iii. 557, 559, 570

Post fine, i. 561

Posthumous child, i. 331

Postliminium, ii. 407

Postman and tubman, iii. 274, n.

Postmaster-General, ii. 569

Post-mortem examination, iii. 678

Post-nuptial settlement, ii. 275

Post-office annuities, iii. 81, n., 84
duties, ii. 568, 570
insurances, iii. 84
offences in relation to, iv. 135
savings banks, ii. 570, n.; iii. 84
telegraphs, ii. 570, n.
the, ii. 568

Postponement of trial, iv. 419

Potentia propinqua, i. 328
remota, i. *ib.*

Potwallers, ii. 360

Pound, iii. 255
breach, iii. 254
covert, iii. 255
overt, iii. *ib.*

Poundage, ii. 571

Power not an estate, i. 229
of attorney, iii. 571, n.
of human punishment, iv. 14
of master, ii. 238
of parent, ii. 293
to appoint, executed by devise, i. 549, n.

Powers, i. 229, 549
of revocation and new appointment, i. 547

Poynings' Laws, i. 93

Practice as to preparing deeds, i. 485, n.

Præcipe in a fine, 560
in a recovery, i. 568
tenant to the, i. 569

Prædial tithes, ii. 722

Præmunire, i. 149; ii. 335, 433, 442, 667; iv. 168—185, 266, 292, 470
punishment for, iv. 182

Prætor fidei commissarius, i. 358

Preachers, ii. 665, n.

Prebendaries, ii. 674, n.; iii. 14, n.

Prebends, ii. 674, n.

Precedence at the bar, iii. 274, n.
grant of, ii. 515
in royal family, ii. 451
patent of, iii. 274
Table of, ii. 615, n.

Precedent condition, i. 303

Precept to return jurors' lists, iii. 516, n.

Pre-contract of marriage, ii. 240

Pre-emption, ii. 537, 599; iv. 183

Preference by bankrupt to particular creditors, ii. 168

Preferments, exchange of, i. 516

Pregnancy, plea of, iv. 466
time of, ii. 287, n.

Preliminary bar examination, i. 19

Premier serjeant, iii. 274, n.

Premises of a deed, i. 485

Prender, lying in, iii. 258

Prepense, malice, iv. 70

Prerogative, as to copyrights, ii. 39
contempts against, iv. 164
court, ii. 185, 192; iii. 305, n.
of Crown, ii. 465—527, 598.
title by, ii. 16, n.
writs, iii. 629

Presbyterians, ii. 706, n.

Prescription at common law, i. 685
by statute, i. 689
corporation by, iii. 8
in a que estate, i. 688

Presence, constructive, of principal, iv. 38

Presentation to benefice, ii. 684; iv. 173

Presentative advowsons, ii. 715

Presentment by grand jury, iv. 360
by the homage, i. 644
of bills of exchange, ii. 118

Presidencies, Indian, i. 112
President of local government board, iii. 49
lord, of the council, ii. 458, 615, n.
Pressing seamen, ii. 594
Press, laws relating to the, iii. 191—193
liberty of the, iii. 191; iv. 260
Presumptions by jury, iii. 545, n.
of law, iii. 540, 541
Presumptive evidence, iii. 545
heir, i. 389
Pretences, obtaining by false, iv. 146, 270
Pretended prophecies, iv. 257
titles, selling, iv. 237
witchcraft, iv. 210
Pretender, treasons relating to the, iv. 163, n.
Prevention of Crimes Act (1871), iv. 349, 433, 451, n., 452
of disease, iii. 174; iv. 277
of offences, iv. 50, 51, n., 290
Previous conviction for felony, iv. 433
Priest, ii. 660
Primary evidence, iii. 541
or derivative conveyances, i. 517.
Primate of England, ii. 670
Primæ preces, ii. *ib.*
Primaria ecclesia, i. 118
Primer fine, i. 560
seisin, i. 198, 209
Primitiæ, i. 199; ii. 532
Primogeniture, i. 403; iv. 497
Prince consort, the late, ii. 449
of Wales, i. 84; ii. 450
Island, Acts relating to, i. 106, n.
title of, ii. 602, n.
Princes of the blood royal, ii. 451
Princess royal, ii. 450
Principal and accessory, iv. 38—45
and agent, ii. 65, 78—see AGENT.
and surety, ii. 106
challenge, iii. 522
in second degree, iv. 38
Principal in the first degree, iv. 38
Printed statement of complaint, iii. 496
Printers, laws as to, iii. 191—193
to the House of Parliament, iii. 193
Prints, copyright in, ii. 41
Prior act of bankruptcy, ii. 168
of Canterbury, ii. 669
Priority in bankruptcy, ii. 173
Priors, ii. 329, n.
Prisage of wines, ii. 561
Prison authorities, iii. 123
breach of, iv. 227
discipline, iii. 125
for convicts, iv. 451
for military offenders, iii. 126
Millbank, iii. 125
Parkhurst, iii. 126
Pentonville, iii. 127
Prisons, iii. 121—127; iv. 450
Act (1865), iii. 123
Prisoners, calendar of, iv. 478
charged with Admiralty offences, iv. 311
counsel for, iv. 424, 430
killing to prevent escape of, iv. 49
Private Acts, i. 70, 615—618; ii. 411
banks, iii. 222
bills, introduction of, ii. 383
chapels, ii. 745
charities, iii. 79
estates of the Crown, ii. 534
interests, when sacrificed to public, i. 165
jurisdiction, courts of, iv. 324
nuisance, iii. 244
persons, arrest by, iv. 350
relations, iii. 436
rights in, i. 135; ii. 225
rivers, i. 671
schools' commission, iii. 100
ways, i. 658
Privateers, ii. 492
Privies to a fine, i. 564
Privileged communications, iii. 379, 536
places, iv. 227, 398, n.
villenage, i. 188, 223

Privilege of speech, ii. 341
of person, ii. *ib.*

Privileges, grant of, by the Crown, ii. 514
of counsel and attornies, iii. 276, 277, n.
of parliament, ii. 340—345
of the clergy, ii. 662
of witnesses, iii. 539

Privilegium clericale, ii. 610, n., 662, n.; iv. 119, 127, 397, n., 440, n.
property propter, ii. 9

Privity of estate, i. 519

Privy council, ii. 457; iii. 308, 346
colonial jurisdiction of, ii. 460
judicial committee of, ii. 461; iii. 308, n., 346, 355
councillors, ii. 459
purse, i. 622; ii. 580
seal, i. 619; ii. 458; iv. 143
tithes, ii. 726, n.
verdict, iii. 551, n.

Prize, condemnation as, ii. 18
court, ii. 18; iii. 343
fight, iv. 252, n.
of war, iii. 343

Probable suspicion, arrest for felony on, iv. 351

Probate, Court of, ii. 185, 193, 213; iii. 275, n., 346
affecting real estate, ii. 190, n.
Divorce and Admiralty division of High Court of Justice, iii. 354
duty, ii. 191, n.
of will, ii. 190, 201
taking out, ii. 201

Probator, iv. 394

Procedendo, writ of, ii. 648; iii. 629

Proceedings in admiralty courts, iii. 344; iv. 311
in an action, iii. 482—604
in chancery, iii. 596—603
in criminal courts, iv. 298, 463
in ecclesiastical courts, iii. 314
in particular actions, iii. 605—626
in error, iii. 577

Process, iii. 488
on an indictment, iv. 361
on an information, iv. 373
on attachment, iv. 339

Prochein amy, ii. 303

Proclamation by Crown, ii. 508
fine with, i. 562, 564—566
in outlawry, iii. 605, n.; iv. 382
of the Riot Act, iv. 254

Proctors, iii. 270, 344
of the Universities, iv. 326, n.

Procurator, iii. 270

Procuring miscarriage, iv. 83

Prodigals, ii. 513, n.

Produce, notice to, iii. 543

Producing miscarriage, iv. 83

Production of cestui que vie, i. 337

Product of taxation, ii. 533

Profanation of the Sabbath, iv. 212

Profession, monkish, i. 142
religious, ii. 702—711

Professions, laws relating to, iii. 204—220

Professorships of law, i. 20

Profits, in alieno solo, i. 683
meane, i. 294; iii. 623, 626
remuneration by, ii. 103

Progress of the laws of England, iv. 482—523

Prohibited degrees in marriage, ii. 242

Prohibition, to county courts, iii. 637, n.
to leave the realm, i. 148; ii. 503
writ of, iii. 635—638

Pro læsione fidei, iii. 325
ratâ itineris, ii. 142

Promise, ii. 54—see CONTRACT.
in consideration of marriage, ii. 56
to marry, ii. 245

Promises, action on, iii. 363, n., 430
or threats to prisoner, iv. 355

Promissory note, ii. 53, 123
action on, iii. 434
Oaths Act (1868), ii. 645
oaths, ii. 402, 622, n.

Promulgation of laws, i. 27
Proof of debts, ii. 172
of will, ii. 190, 201
Proofs, iii. 531
Proper feuds, i. 180
Property, by finding, ii. 10
demanding with menaces, iv. 129, 236, n.
fraudulent conversion of, iv. 133
in action, ii. 11
in possession, ii. 10
in ship, iii. 149
injuries to, iii. 385—436
literary, ii. 34
offences against, iv. 99—148
origin of, i. 151—160
per industriam, ii. 5
personal, i. 167; ii. 2
propter privilegium, ii. 5, 9
impotentiam, ii. 5, 8
ratione privilegii, ii. 22
soli, ii. *ib.*
real, i. 167
rights of, i. 136, 138, 165
tax, ii. 573, n.—see INCOME TAX.
Prophecies, pretended, iv. 257
Proprietary chapels, ii. 746
Proprietate probandâ, writ de, iii. 423, n.
Proprietors of patents, ii. 31, n.
of stage carriages, iii. 181
Propter affectum, challenge, iii. 525
defectum, iii. 524
delictum, iii. *ib.*
honoris respectum, iii. *ib.*
odium et atiam, iii. 642, n.
Prorogation of Parliament, ii. 390
how announced, ii. *ib.*
Pro salute animæ, proceedings, iii. 309, n., 437; iv. 207
Prosecution by appeal, iv. 378
by impeachment, iv. 299
by indictment, iv. 361
by information, iv. 378
by presentment, iv. 360
by the Crown, ii. 506
expenses of, iv. 435
malicious, iii. 383
the several methods of, iv. 360—380
Prosecutor, public, ii. 505
Prostitute, violation of a, iv. 89
Protection of bankrupt from arrest, ii. 161
of buyer, ii. 76
of children, ii. 288
of creditors, ii. 50
of purchasers and mortgagees against insecure titles, i. 694
order to wife, ii. 267
Protector of the settlement, i. 251, 576, 578
Protest of bill of exchange, ii. 121, 122
of peers, ii. 346
Protestant sectaries, ii. 706
Prothonotaries, i. 49
Provident societies, iii. 90, 91
Province of archbishop, i. 116; ii. 667
Provincial constitutions, i. 65
Proving a will, ii. 191, 193
in chancery, iii. 463, n.
Provisional protection of patent, ii. 29, n.
specification, ii. 28
Provisions, papal, iv. 179
unwholesome, selling, iv. 268
Proviso for re-entry, i. 514
trial by, iii. 518
Provisors, statutes against, iv. 180
Proximity, degrees of, ii. 194, 242
Proxy, voting by, ii. 346
Pubertas, iv. 23
Public Act of Parliament, i. 69
and endowed schools, iii. 97—102
appointments, sale of, ii. 45
baths, iii. 178, n.
bills, introduction of, ii. 383
carriages, iii. 180
chapels, ii. 745
companies, iii. 19—25
conveyance, iii. 180—190
debt, ii. 574
Elementary Education Acts, ii. 293
elementary education, iii. 93
schools, iii. 93, 106, n.
rules for, iii. 94
examination for calls to the bar, i. 20

Public examination of bankrupt, ii. 158
funds, ii. 576
good, sacrifice of private interests to, i. 165
Health Act (1848), iii. 172; iv. 277
(1872), iii. 176
houses, iii. 194—201; iv. 214
nuisances, iii. 244, 402; iv. 6, 270—277
officer of a bank, iii. 229
officers, misconduct of, iv. 187, 246
offices, sale of, iv. 188
property, iii. 64, n.
records, iv. 224
revenue, costs in matters relating to, iii. 670
rights, i. 136, 138; ii. 316; iii. 443.
rivers, i. 671
Schools Act (1868), iii. 97
Schools Act, iii. 93, 106, n.
schools' commission, iii. 97
verdict, iii. 551, n.
walks, iii. 178, n.
ways, i. 658
works, ii. 535, n.
wrongs, iv. 1

Publicans, iii. 194

Publication of will, i. 599; ii. 188

Pueritia, iv. 23

Puffer at auction, ii. 76, n.

Puis darrein continuance, iii. 508, 509

Punishment, capital, i. 143; iv. 74—76, 453, 478
different kinds of, iv. 444—462
end of, iv. 13
general nature of, iv. 10
measure of, iv. 14
mitigation of, by the Crown, iv. 49, 473
object of, iv. 13
power of, iv. 11
should be certain rather than severe, iv. 18

Pur autre vie, tenant, i. 258, 450

Purchase of railways by government, iii. 185
title by, i. 334, 385, 386

Purchaser, blood of the, i. 393
by conveyance to self, i. 401, 542

Purchaser, descent from the, i. 393
enactments to protect, ii. 51
how affected by a judgment, iii. 572, n., 573
meaning of the term, i. 386, 391
quasi, i. 427, 431

Purchasing and selling offices, iv. 188

Pure villenage, i. 188

Purgation by oath, iv. 407
by ordeal, iv. *ib.*

Puritans, ii. 706

Purlieus, i. 667

Purpresture, iv. 271, n.

Purse, privy, ii. 569

Purveyance, ii. 537, 599; iv. 183

Purus idiota, ii. 509

Putative father, ii. 297

Putting in fear, iv. 126

Pyne's case, iv. 155

Q.

Quakers, affirmation by, ii. 338; iii. 536, n.; iv. 242, n., 336, n., 361, n.
marriage of, ii. 250, 251, n., 258
meetings of, iv. 198
tithes from, iii. 311

Qualification, as to game, ii. 19
of burgesses, iii. 34
of freemen, iii. *ib.*
of jurors, iii. 524; iv. 418
of justices, ii. 646, 647
of members of parliament, ii. 365—369
of parliamentary electors, ii. 349—365

Qualified corporations, iii. 19
fees, i. 239
medical practitioners, iii. 211
property, ii. 5, 10, 19, 82

Quality, warranty of, ii. 76

Quando acciderint, assets, ii. 204

Quanti minoris, actio, ii. 76, n.

Quantum meruit, contract to pay, ii. 57

Quarantine, iii. 169
the widow's, i. 271
Quare clausum fregit, iii. 398
impedit, iii. 334, 361, 362, 398, 415, 419, 420, 469, 474, 608—613
incumbravit, iii. 609, n.
non admisit, iii. 613, n.
Quarrelling in church, iv. 253
Quarter sessions, ii. 143, n., 648; iv. 317
adjourned, iv. 317, n.
borough, iii. 37
Quartering of soldiers at inns, ii. 589
Quashing an indictment, iv. 400
order for removal, iii. 59
poor rate, iii. 67
Quasi entail, i. 450
purchaser, i. 427, 431
Quays, ii. 500
Quebec, Acts relating to, i. 106, n.
Que estate, prescribing in, i. 687
Queen—see KING.
Queen Anne's bounty, ii. 534
attorney and solicitor of, ii. 445; iv. 307, n.
consort, ii. 444—448
coroner of the, iv. 307, n.
dowager, ii. 449
gold, ii. 446; iv. 193
her claim to the allegiance of India, i. 113
husband of a, ii. 449
regnant, ii. *ib.*
revenue of the, ii. 446
shooting at the, iv. 166
Queen's Bench, iii. 331—333; iv. 307
—see KING'S BENCH.
counsel, iii. 273, 274, n.—see KING'S COUNSEL.
evidence—see KING'S EVIDENCE.
printer, ii. 40, 386, 388
Queen's Land, Act relating to, i. 106, n.
Question, the—see TORTURE.
Quia emptores, statute of, i. 199, n., 228, 234, 274, 469, 677; iv. 502
Quick with child, i. 139; iv. 83, 467
Quid pro quo, ii. 59
Quidquid plantatur solo, solo cedit, ii. 218
Quiet enjoyment, i. 490
Qui facit per alium facit per se, ii. 234; iii. 375
Quinto exactus, iv. 383
Qui tam actions, iii. 436
Quit rents, i. 628, 676
Quod permittat, writ of, iii. 413, n.
Quo minus, iii. 339, n.
Quorum, justices of the, ii. 645; iv. 314, 317
Quo warranto, iii. 30, 638—642
Quousque, seizure, i. 637

R.

Races, horse, iv. 274
Racing by coachmen, iv. 274, n.
Rack rents, i. 676
the, iv. 392, n.
Ragged School exempt from rates, iii. 65
Railway Clauses Act, iii. 182, n.
commissioners, iii. 184, n.
companies, ii. 88, n.
Powers Act, iii. 9, n.
Construction Facilities Act (1864), iii. 9, n.
passengers, endangering, iv. 95
Regulation Act (1868), iii. 183, n.
trains, cheap, iii. 185, n.
Railways, iii. 182—187
Acts relating to, iii. 182
and Canal Traffic Act, iii. 184, n.
purchase of, by government, iii. *ib.*
Rank modus, ii. 729
table of, ii. 614, n.
Rape, by infant, iv. 25, n., 88
crime of, iv. *ib.*
evidence of, iv. 89
in Sussex, i. 127
punishment of, iv. 86—88
Rapine, iv. 125

Rasure in deed, i. 497

Rate, allowance of, iii. 66
borough, i. 129, n.; iii. 89
church, ii. 698
county, i. 129; iii. 68, n.
for School Board, iii. 97
payment of, by landlord, ii. 387, n.
by voter, ii. 356, 361, 362
poor, iii. 44, 63—69

Ratification of agency, ii. 67
of contract, ii. 307

Rating owner, iii. 65, n.

Ravishment of children, iii. 440
of wife, iii. 437

Reading in, by incumbent, ii. 687
of a deed, i. 491

Real actions, i. 314, n.; iii. 280, 361, 396, 467, 605, 608
and personal representatives, ii. 198
chattels, i. 167, n., 280, 281
composition, ii. 726
estate, i. 281
property (8 & 9 Vict. c. 106), i. 317, 334, 475, 477, 481, 486, 513, 516, 523, 524
Act to facilitate proof of title to, and conveyance of, i. 694
Act to obtain declaration of title to, i. 698
Act to simplify law of (7 & 8 Vict. c. 76), i. 317, n.
Acts to shorten deeds (8 & 9 Vict. cc. 119, 124), i. 485, n.
commissioners, iii. 395
things, i. 167, 280

Realm, leaving the, i. 148; ii. 503
recall of subjects to the, ii. 504; iv. 200
transportation from the, iv. 449

Realty, i. 167

Reasonable fine, i. 222
part, doctrine as to, ii. 179, 180, 210, 292

Re-assurance, ii. 131

Rebutter, iii. 507, n.

Rebutting evidence, iii. 539

Recalling a pilot's licence, iii. 157, n.

Recaption, iii. 214, 617

Recapture, ii. 18

Receipt of the exchequer, iii. 339

Receipts, forging, iv. 143

Receiver under mortgage, i. 308

Receivers of wrecks, ii. 544

Receiving stolen property, iv. 42, 136, 356, n.

Recitals in deed, i. 486

Reclaimed animals, ii. 5, 6

Recognizance, ii. 143; iv. 14
forfeiture of, iv. 296
for good behaviour, 295—297
in error, iii. 580, n.; iv. 464
in nature of statute staple, i. 310
of bail to action, iii. 497
on filing an information, iv. 378
to keep the peace, iv. 290—295
And see BAIL.

Record, i. 47, n.; iii. 269, 515, 553
amending, iii. 563; iv. 370
conveyances by, i. 502, 615
courts of, iii. 269
debts of, ii. 143; iii. 662
entry of judgment on, iii. 566; iv. 443
estoppel by, i. 482, n.
falsifying, iv. 223
nisi prius, iii. 515
office, public, i. 47, n.; iv. 224
suggestion on, iii. 518, 519
trial by, iii. 513, n.

Recorder of a borough, ii. 367; iii. 87, 293
of London, iii. 293, n.; iv. 316

Recording judgment of death, iv. 443, n.

Records, preservation of the public, i. 47, n.; iv. 223, 224
stealing, iv. 122, n., 188, 223

Recoveree, i. 569

Recoveror, i. *ib.*

Recovery, abolished, i. 250, 558
common, i. 248, 457, 568

Recovery, force of a, i. 572, 573—see FINE.
in value, i. 569
of things real, limitations of actions for, iii. 467—475

Recreant, proving, iv. 413

Recreation grounds, i. 461, n.

Rector, sinecure, ii. 683

Rectorial tithes, ii. 681

Rectories, ii. 683

Rectors and vicars, ii. 677

Recusatio judicis, iii. 523

Reddendum of deed, i. 487

Redeem, bill to, i. 306

Redemption, equity of, i. 306; iii. 473
of pledge, ii. 80

Redhibitoria actio, ii. 76, n.

Reditus albi, i. 676
capitales, i. *ib.*
meaning of the word, i. 672
nigri, i. 676
quieti, i. *ib.*
siccus, i. 675

Redress by act of party, iii. 239, 241—262
by action, iii. 358—371, 486
by operation of law, iii. 263—266

Re-entry by landlord, iii. 624
for breach of condition or covenant, i. 300, 301, 514
on land, iii. 243, 391, 400, 674

Reeves's History of the English Law, i. 51, n.

Re-examination, iii. 538

Referees under Judicature Act (1873), iii. 555

Reference at nisi prius, iii. 259
compulsory, iii. 259, n., 555

Reform Act of 1832, ii. 353, 357, 359
of 1867, ii. 359
of the law since 1688, iv. 517

Reformation, protestant, ii. 702; iv. 510

Reformatory schools, ii. 291; iii. 108; iv. 447, n.

Refreshment at elections, ii. 377
houses, iii. 200

Refusal of assent to bill, ii. 387
to accept bill, ii. 120

Refusing to bury the dead, iv. 285
to institute a clerk, ii. 719; iii. 611
to serve a public office, iv. 285

Regardant, villeins, i. 216

Regent, ii. 477

Regiam majestatem, i. 86, n.

Register commission, iii. 234
medical, iii. 209
of criminals, iv. 452
of electors, ii. 352, 364
office for seamen, iii. 155
of mortgages and incumbrances, i. 695
of original writs, iii. 324, 489
of patents, ii. 29, n.
of pauper servants, ii. 230, n.
of proprietors, ii. 31, n.
parochial, iii. 238

Registered hospitals, iii. 119
medical practitioners, iii. 211

Registrar-general, iii. 234

Registrar in bankruptcy, ii. 156, 157, 158, 177
of attornies and solicitors, iii. 217
of births, deaths and marriages, iii. 234
of companies, iii. 20
of County Court, iii. 285, 421
of friendly societies, iii. 88, 90
of land office, i. 694
of the Privy Council, ii. 461, n.
of seamen, iii. 155

Registration, civil, iii. 233
ecclesiastical, iii. 231
in boroughs, ii. 362
in counties, ii. 354
of aliens, ii. 409
of baptisms, iii. 232
of bills of sale, ii. 52
of births, ii. 251; iii. 235
of British ships, iii. 148
of burials, iii. 232
of charitable donations, iii. 73
of composition deeds, ii. 177, n.
of companies, iii. 20, 21

Registration of conveyances, i. 614
of copyright, ii. 37
of criminals (Habitual Criminals Act, 1869), iv. 452
of deaths, iii. 236
of electors, ii. 351, 354—356, 362
of judgments, iii. 566
of life annuities, ii. 95
of lunatic hospitals, iii. 118
of marriages, ii. 251; iii. 236
of medical men, iii. 209
of parish apprentices, ii. 230, n.
of rent charges, ii. 95
of seamen, iii. 151, 155
of title, i. 694

Registries, district, iii. 491, n.

Registry, land, i. 694
of Court of Admiralty, iii. 344

Regnant, queen, ii. 449—and see KING.

Regno, ne exeat, i. 148; ii. 504

Regrating, iv. 266, n.

Regular clergy, ii. 681, n.

Regulation of gaols, iii. 124, 125

Rehear the appeal, iv. 339, n.

Rehearing, iii. 580, 603

Reigate, disenfranchisement of, ii. 334, n.

Rejoinder, iii. 507, n.

Relation, doctrine of retrospective, ii. 167

Relations, defence of, iii. 241
rights in private, ii. 225

Relator, iii. 72, 641, n.

Release, by one administrator, ii. 202, n.
by way of discharge or renunciation, i. 499, 518, n.
deed of, i. 518
effectual as a lease and release, i. 538
extinction of incorporeal hereditaments by, i. 692
from rent-charge, i. 675, n.
of lands, i. 536

Relief, afforded in chancery, iii. 456
by whom administered, iii. 62
cost of, iii. 62, n.
feudal, i. 177.
in copyhold, i. 221
in knight service, i. 197
in socage, i. 208
law of, iii. 62, 63
of pauper wife, ii. 267, n.
out-door, iii. 108

Religion, offences against, iv. 201—214

Religious houses, i. 358; ii. 279; iv. 179—see MONASTERIES.
impostors, iv. 212
instruction in board schools, iii. 96, n.
in prisons, iii. 124

Remainder, i. 319
cannot be limited on fee simple, i. 321
contingent, i. 326, 334
cross, i. 354
curtesy and dower in, i. 325
definition of, i. 319
displacement of, i. 325
estate in, i. 313
executed, i. 326
executory, i. *ib.*
freehold, i. 319
how it differs from a reversion, i. 321
in things personal, ii. 13
rules for the creation of, i. 323
vested, i. 326

Remedial part of law, i. 36, 37
statutes, i. 71

Remembrancer, Queen's, iii. 340, n.
of the exchequer, iii. 339, n.

Remission of sentence by the Crown, iv. 466

Remitter, iii. 264, 265, n.

Remitting cause to the county court, iii. 287

Remote damage, iii. 369

Removal, illegal, iii. 60
of fixtures, ii 217—220
of goods to prevent distress, iii. 252
of nuisances, iii. 244
of nuisances Act, iii. 174
of poor, iii. 45, 57—61

Render, lying in, iii. 258

Renewal of church leases, ii. 736
of writ of summons, iii. 481, 493

Renouncing probate, ii. 191, n.

Rent, apportioned, i. 261, 678; iii. 246, n.
charge, i. 674, 675, n.; ii. 95; iii. 245, 246, n.
tithe commutation, ii. 732
chief, i. 676; iii. 246
definition of, i. 69; iii. 470, n.
distress for, iii. 245
double, i. 295
fee farm, i. 676
in arrear, iii. 246, 250, n., 473
incident to reversion, i. 316
limitation of actions for, iii. 473, 474
of assize, i. 676
origin of, i. 180
quit, i. 628, 676
rack, i. 676
seck, i. 675; iii. 246
service, i. 673; iii. 245
subtraction of, iii. 409
when due, i. 677
where due, i. *ib.*

Renting a tenement, settlement by, iii. 53

Repair, covenant to, iii. 430

Repairs of church, iii. 313
of ecclesiastical residence, ii. 713

Repeal of Acts, not in force, i. 69
of statutes, effect of, i. 78

Repleader, iii. 565

Replegiari facias, writ of, iii. 423, n.

Replevin, iii. 256, 363, 420, 423, n., 613—617

Replication, iii. 506, n., 607

Reply, iii. 506
right to, iii. 530, n.
to answer, iii. 599

Reports, law, i. 49, 50, n.
scandalous as to the crown, iv. 168

Representation by executors and administrators, ii. 197, 198
by heirs, ii. 210—212

Representation concerning character, ii. 105, n.
fraudulent, iii. 427, 428
in a policy, ii. 138
in descents, i. 406
in parliament, ii. 351
of the people Act (1867), ii. 351, 355, 358, 359, 361; iv. 519
under the statute of distributions, ii. 211

Representative assembly, i. 103
peers, ii. 331, 347

Representatives, real and personal, ii. 198

Reprieve, iv. 466

Reprisal, ii. 492; iii. 242
general, ii. 494, n.

Republication of will, i. 598, n.

Repugnant clauses, i. 501
condition, i. 302
enactments, i. 78

Reputation, injuries affecting, iii. 377
security of, i. 144

Reputed father, ii. 299
owner, ii. 166

Request, letters of, iii. 306

Requests, courts of, iii. 284
the Court of, iii. 324

Requisites of deed, i. 483, 496

Rere-fiefs, i. 180

Rescue of a prisoner, iv. 225, n., 230
of distress, iii. 254

Reservation of rent, i. 683

Reserved point, iii. 558, n.
rights of voting, ii. 359

Reserve volunteer seamen, ii. 595, n.

Reserving questions of law, iv. 442

Res gestæ, iii. 544

Residence, ecclesiastical, ii. 689
of clergy, ii. *ib.*

Residuary account, ii. 208, n.
devise, i. 607
legatee, ii. 208

Residuum, distribution of, ii. 208—212

Resignation bond, ii. 721
of benefice, ii. 673
of bishop, ii. 673, n.
of clergyman, ii. 694
of dean, ii. 673, n.

Respectum, challenge propter, iii. 524
Respondeat ouster, iii. 569; iv. 405.
Respondendum, habeas ad, iii. 643, n.
Respondentia, money at, ii. 92, 93
Responsa prudentum, i. 62
Responsibility of ministers, ii. 481
Restitution of conjugal rights, ii. 238, n., 279, n.
of stolen goods, iv. 437
Restoration, The, ii. 435; iv. 514
Restraining and enabling statutes, i. 71; ii. 720
Restraints of alienation, i. 467
Resulting trust, i. 375
use, i. 361, 541
Retainer, iii. 263
by executor, ii. 203
Retaliation, iv. 16
Retorno habendo, iii. 422, n., 516
Return irreplevisable, iii. 617
of execution writs, iii. 587, n.
of goods in replevin, iii. 614
Returning officer at elections, ii. 370, 378
action against, iii. 444
Reus, iii. 270
Revealed law, i. 35
Revenue causes, iii. 670
jurisdiction of Court of Exchequer, iii. 338, 339
of Crown, ii. 528—581
officers, assaulting, iv. 263, 264
Reversal of judgment, iii. 579, 580; iv. 463
of outlawry, iv. 384, 465.
Reversion, i. 313
definition of, i. 314
displacement of, i. 317
estate in, i. 314
freehold, i. 316
grantee of, i. 301
how it differs from a remainder, i. 321
incidents of a, i. 315
Reversionary interest, sale of, i. 337
Reversionary interests of wives, in personalty, ii. 266
Reverter, possibility of, i. 315, n.
Review, bill of, iii. 603
commission of, iii. 607, n.
Reviling the ordinances of the church, iv. 208
Revised statutes, ii. 525
Revising barristers, ii. 355; iii. 334
Revision of statute law, Acts for, i. 68, n.
Revival of Act, i. 79
of will, i. 598, n., 601
Revivor from lapse of time, iii. 591
on change of parties, iii. 592
order of, iv. 67
writ of, iii. 591
Revocable licence, i. 230
Revocation of agency, ii. 66
of a will, i. 596, 600
of uses, i. 547
Revolution, The, of 1688, ii. 439; iv. 518, 522
Rewards for apprehending offenders, iv. 352
for stolen goods, iv. 231
Riding armed, iv. 257
Ridings, i. 127
Right close, writ of, i. 224
mere, iii. 302
of action, iii. 369
of advowson, writ of, iii. 415
of common, i. 649
of dower, writ of, iii. 361, 397, 605, n.
of entry, i. 301, 333; iii. 394—398
of possession, i. 153, 314
actual, iii. 391
apparent, iii. 390
of property, i. 136; iii. 385—436
of re-entry, i. 514
of tithes, iii. 309
of way, i. 658
petition of—see PETITION OF RIGHT.
proper, iii. 392
to begin, iii. 529
turning to a, iii. 390
violation of a, iii. 239, 240
writ of, iii. 392, 415, n.; iv. 412.

Rights and wrongs, i. 29, 136; iii. 239, 240
bill of, ii. 469; iv. 517
in private relations, i. 136, 138
of property, i. 136
personal, i. 136, 138
petition of, ii. 469
public, i. 138; ii. 318
Riot Act, iv. 249, 517
Riotous assemblies, iv. 248
Riotously demolishing buildings or machinery, iv. 250
plundering or destroying wreck, iv. 251, n.
Riots, iv. 253
at elections, ii. 375
Ripon, bishop of, i. 116, n.
Ritual, Church, ii. 703
Rivers, i. 671
Rixatrix communis, iv. 276
Robbery, iv. 124
assault with intent to commit, iv. 127
punishment of, iv. 127, 128
Robert, Duke of Normandy, ii. 424
Rochester bridge, iii. 269
Roe, Richard, the fictitious defendant, iii. 618
Rogues and vagabonds, iii. 57; iv. 111, n., 212, 288
Roll, burgess, iii. 34, 40
freemen, iii. 40
Rolle's Abridgment, i. 51
Rolls, Master of the, iii. 330
Roman Catholics, charities for, iii. 76, n.
declaration by, ii. 710
relief of, ii. *ib.*
Roman classification of actions, iii. 360, n.
law, i. 62; iv. 489
of legitimacy, ii. 284
of succession, ii. 210
Rome, appeal to, iv. 182, 496
diplomatic relations with, ii. 485; iv. 182, n.
ecclesiastical titles from, iv. 186
procuring bulls from, iv. 179
provisions from, iv. *ib.*
Romilly, Sir Samuel, iv. 20, n.
Romney marsh, iii. 296
Roose, John, iv. 68, n.
Root of descent, i. 396, 398
Roots, destroying, iv. 140
Rope dancers, iv. 272
Routs, iv. 253
Royal assent to bill, ii. 387
College of Surgeons, iii. 6, 206
of Physicians, iii. 6, 205, 209
councils, ii. 455—463
dignity, ii. 476
family, ii. 444; iv. 156
annuities to, ii. 450, n.
exempted from toll, iii. 140
fish, ii. 19, n., 448, 539, 540
forces, ii. 582
forest, i. 668, n.
grants, i. 615, 618
hospitals, ii. 593, 597
institution, iii. 105
marriage, ii. 259, 454; iv. 157, n.
marines, ii. 597
military stores, iv. 194
mines, ii. 540
naval stores, iv. 194
prerogative, ii. 465—527
press, ii. 40
revenue, ii. 528—581
ships, iv. 194
Society, the, iii. 6
title, ii. 413
Rubric, marriage according to the, ii. 247
Rugby school, iii. 97
Rule absolute, iii. 628
for an attachment, iv. 339
for a special jury, iv. 419
in Shelley's case, i. 334
nisi, iii. 628
of the Stock Exchange, i. 56, n.
to show cause, iii. 628
Rules and orders in bankruptcy, ii. 148, n.
for Elementary Schools, iii. 94
for the County Courts, iii. 288, n.
of evidence not affected by Judicature Act (1873), iii. 530, n.
of procedure, iii. 319, 480
Running days, ii. 141
with the land, covenants, i. 491, 514
Rural deanery, i. 117
deans, ii. 676
sanitary districts, iii. 176, 177

S.

Sabbath-breaking, iv. 212
Sacculariі, iv. 125
Sacrament, speaking against the, iv. 208
Sacrilege, iv. 111, 397, n.
Sacristan, ii. 701, n.
Safe-conduct, ii. 17, 494; iv. 217
Saladine tenth, ii. 555
Salaries of curates, ii. 673
of the judges, iii. 341
St. German's "Doctor and Student," i. 51
St. Helena, i. 111
Sale, bill of, ii. 49, 52
by defendant, ii. 51
by mortgagee, i. 307
contract of, ii. 68
in market overt, ii. 53, 73
of arsenic, iii. 178, n., 208, n.
of chancellor's living, ii. 739
of distress, iii. 256
of goods, contract of, ii. 50, 68
action on, iii. 431
in dispute, iii. 595
of horses, ii. 75
of infected meat, iv. 269
of land by auction, ii. 76, n.
by judgment creditor, iii. 573, 587
of property, origin of, i. 160
of public offices, ii. 621; iv. 188
of real property, practice on, i. 485, n.
of unwholesome provisions, iv. 268
to defeat execution, ii. 52
warranty on, ii. 76
Salmon Fisheries Act, iii. 165, n.
Salvage, ii. 18, 134, 544; iii. 291, 342, n., 345, n.
Sanction of laws, i. 35, 37
Sanctuary, plea of, iv. 227, 397, n.
Sanitary Act (1866), iii. 286, n.
(1868), iii. *ib.*
(1869), iii. *ib.*
condition of the people, iii. 168—179
districts, iii. 176
enactments, iii. 178, 179
improvement of London, iii. 178, n.
Sanitary inspector, iii. 175
Sans nombre, common, i. 653
Sark, island of, i. 100
Satisfaciendum, habeas ad, iii. 643, n.
Satisfaction, after accord, iii. 258
entering on record, iii. 589
Satisfied terms, i. 381
Saunders's Reports, i. 50
Saving the statute of limitations, iii. 481
Savings' Banks Acts, iii. 81—86
fund of, iii. 82
post-office, ii. 570, n.; iii. 84
Savouring of the realty, i. 281; iv. 115
Savoy, the, iv. 227, n.
Saxon courts, iii. 302
invasion, iv. 485
laws, i. 41—45; iv. 488
Scaccarium, iii. 339
Scandal as to the sovereign, iv. 168
Scandalous words, iii. 378
Scandalum magnatum, ii. 611; iii. 378, n.
Sceptrum, investiture per, ii. 665
Schemes of ecclesiastical commissioners, ii. 749
Schireman, ii. 603
Schools, boards, iii. 94
bye-laws by, iii. 96
default by, iii. 95
election, iii. 94
expences of, iii. 97
fees, payment of, iii. 95
elementary, iii. 92—97
endowed, iii. 97—102
for the poor, iii. 105—107
grammar, iii. 99
industrial, iii. 110
inspectors of, iii. 107
of anatomy, iii. 213
pauper, iii. 107
reformatory, iii. 108
sites for, iii. 102
Scientific institutions, iii. 102, 104
Scilly isles, iii. 57
Scintilla juris, i. 368, n.; iv. 431
Scire facias, against bail, i. 622

Scire facias for repeal of patent, ii. 33; iii. 322, n., 594, 668
to recover crown debts, iii. 664

Scold, common, iv. 276

Scot and lot voters, ii. 360

Scotch members, number of, i. 88
peers, i. 88; ii. 331, 347

Scotland, i. 86
Act of union with, i. 87; iv. 517
appeals from courts in, iii. 357
church of, i. 88
law of, i. 90, n.
marriage in, ii. 259, n.
population of, i. 184, n.
removal of pauper to, iii. 58, n.
Universities of, i. 88

Scripture, scoffing at, iv. 207

Scroop's Inn, iii. 272, n.

Sculpture, copyright in, ii. 41

Scutages, i. 201; ii. 556, 557

Scutifer, ii. 617, n.

Sea banks, &c., injuries to, iv. 140
Birds Protection Act, ii. 21, n.
dereliction or encroachment of, i. 452
marks, ii. 502; iii. 159
offences committed at, iv. 311
shore, i. 116
worthiness, ii. 132; iii. 154, 155, 188

Seal, Great, i. 619; iv. 143, 474
of corporation, iii. 12
on deed, i. 492
privy, i. 619

Sealed bag, money in, iii. 250

Seals, antiquity of, i. 492

Seamen, naturalization of, ii. 412, n.
provisions for safety of, iii. 153
register office for, iii. 155
wills by, ii. 188

Seamen's wages, iii. 152, 291, 345, n.

Search warrant, iv. 347

Searching poachers, ii. 21, n.

Seas, the high, i. 116
offences on, iv. 312, 364

Seat in parliament, how vacated, ii. 381
effect of accepting office on, ii. 368

Seats in church, iii. 314

Sec. stat., appearance, iii. 495, n.

Seck, rents, i. 673, 675; iii. 246

Secondaries of sheriff, iii. 515, n.

Second class certificate in bankruptcy, ii. 161, n.
conviction for felony, iv. 432, 433
deliverance, writ of, iii. 616

Secondary evidence, iii. 541
use, i. 546

Secretaries of poor law board, iii. 50, n.
principal, of state, ii. 459, 619, n.; iv. 345, n.

Secretary of legation, ii. 487, n.
of State for India, i. 114

Secta ad furnum, &c., iii. 410, n.
ad molendinum, iii. *ib.*
ad torrale, iii. *ib.*

Sectaries, protestant, ii. 706

Secular clergy, ii. 681, n.

Securities for good behaviour, iv. 295
for keeping the peace, iv. 291
for money, iii. 584
valuable, stealing, iv. 122

Security of the crown, Act for the, iv. 167

Se defendendo, homicide, iv. 54

Seditious libel, iv. 259
societies, iv. 197
speaking, &c., iv. 168

Seducing artists abroad, iv. 266, n.
to desert, iv. 196
to leave service, ii. 234; iii. 441

Seduction, iii. 442

See of a bishop, i. 116, 125; ii. 671

Seigniory, i. 234

Seisin, i. 281
in deed, i. 265
in law, i. *ib.*
livery of, i. 189
primer, i. 192, 198, 209

Seisina facit stipitem, i. 396, 399, 681
Select committee, ii. 365
of elections, ii. 379, n.
vestry, i. 123, n.
Act, iii. 47
Selecti judices, iii. 529, n.
Self-defence, i. 140; iii. 241; iv. 52, 54—56
murder, iv. 59
Selling by false weights and measures, iv. 265
pretended titles to land, iv. 237
public offices, ii. 621; iv. 188
unwholesome provisions, iv. 268
Senatus consulta, i. 69, n.
decreta, i. *ib.*
Separate maintenance, ii. 277
use, property settled to, ii. 273
Separation, arrangements for, ii. 275
by consent, ii. 270
judicial, ii. 280
of benefices, chapelries, &c., ii. 751
Separatists, affirmation by, ii. 338, n.; iii. 536, n.; iv. 242, n., 336, n.
who are, ii. 338
Sepoy revolt, i. 113
Septennial parliaments, ii. 394, 599
Sequestration of a benefice, ii. 662; iii. 585
Serjeant at law, i. 17; ii. 616, n.; iii. 272, 275, n.
judges of the Supreme Court of Judicature need not be, iii. 273
antient, iii. 274, n.
premier, iii. *ib.*
Serjeants' Inn, iii. 272, n.
Serjeanty, grand, i. 200
petit, i. 210
Servant, ii. 225—237
assaulting, ii. 233
domestic, ii. 227
embezzlement by, iv. 130
enactments to protect, ii. 228, 229, 231
giving character to, ii. 233; iii. 380
larceny by, iv. 130
master's responsibility for, ii. 235; iii. 375
menial, ii. 227
Servant, neglect of fellow, ii. 232
negligence of, ii. 233
Service, i. 180
customary, iii. 410
de chevalier, i. 188
heriot, i. 629
in antient demesne, i. 224
in socage, i. 205
knight, i. 188
of rent, iii. 409
of writ in ejectment, iii. 621
of writ of summons, iii. 494
refusal to fulfil contract of, ii. 229
villein, i. 215
Servientes ad legem, iii. 272, n.
Serving foreign states, iv. 195
Servitium militare, i. 188
Servitude, penal, iii. 125—127; iv. 449—453
title to vote by, ii. 360
Sessional division, ii. 649, n.
Session, great courts of, in Wales, i. 85; iii. 317, n.
of parliament, ii. 390
Sessions, for the highway, iii. 133
general, of the peace, iv. 312
of Central Criminal Court, iv. *ib.*
offences triable at, iv. 317—319
petty, ii. 649; iii. 67
quarter, ii. 648; iii. 59; iv. 317
special, ii. 649
Set-off, plea of, iii. 503
Setting fire—see BURNING.
spring guns, &c., iv. 96
Settled estates Act, i. 252, 253, 266, 279, 478, 633, n.
of bankrupt, ii. 163, n.
of infant, ii. 306
poor, iii. 56
Settlement, Act of, i. 252, n.; ii. 470; iv. 162, 517
by apprenticeship, iii. 53
by birth, iii. 52
by certificate, iii. 46, n.
by estate, iii. 54
by hiring and service, iii. 55
by inhabiting forty days, iii. 53, 55
by marriage, iii. 52

Settlement, by parentage, iii. 52
by paying taxes, iii. 54
by performing offices, iii. 55
by renting a tenement, iii. 53
family, i. 252, 333, 574, 577
law of, iii. 44, 52
marriage, ii. 274
of bastard, ii. 300
protector of the, i. 251, 578
right of, iii. 45
strict, i. 333

Settling issues by judge, iii. 511

Several fishery, i. 671, n.
issues, iii. 510
modes of prosecution, iv. 360—380

Severalty, estates in, i. 388

Severance of jointure, i. 344

Severity of punishment, iv. 18

Sewers, iii. 178, n.
commissioners of, iii. 296
metropolitan, iii. 179, n., 296, n.

Sexton, ii. 700

Shack, common of, i. 652

Shares, banking, sale of, ii. 75
companies limited by, ii. 221, n.; iii. 22
in public undertakings, ii. 221
in ships, iii. 149
warrants, iii. 21, n.

Sheep injured by dog, iii. 376
stealing, iv. 121

Shelley's case, rule in, i. 334, 378

Sheppard's Touchstone, i. 51

Sheriff, i. 126; ii. 604, 623—634; iv. 321, 361
action against, iii. 444
claims against, iii. 590, n.
county court of the, ii. 628; iii. 282
deputy of the, ii. 631
duty of, at elections, ii. 370, 378
general functions of, ii. 628
his duty in executing criminals, iv. 479
his power of arresting, iv. 348
in Wales, i. 85, n.
inquiry before under, iii. 570
is returning officer, ii. 370
liability of, for escape, iii. 121

Sheriff, mode of electing, ii. 624
of county, iii. 121
office of, is compulsory, ii. 627
officers of, ii. 631
of London and Middlesex, ii. 624, n.
of Westmoreland, ii. 624, n.
pocket, ii. 626
protection to, iii. 590, n.
qualification for, ii. 627
responsibility of, ii. 629, 633
under, ii. 631
woman may be, ii. 624, n.

Sheriff's court in London, iii. 293, n.
tourn, iv. 321

Shifting use, i. 546

Ship money, iv. 514
owner, liability of, ii. 89, 141, n., 142; iii. 161
ownership of share in, iii. 149

Shipping, Merchant, Acts, ii. 544; iii. 147, 187
offices, iii. 151

Ships, British, laws relating to, iii. 148
burning, iv. 195
destroying, iv. *ib.*
false signals to, ii. 546
foreign, within British jurisdiction, iii. 146, n.
larceny in, iv. 194
property in, iii. 149
survey of, by Board of Trade, iii. 154

Shipwrecks, ii. 540

Shire, i. 126

Shooting at the queen, iv. 166
malicious, iv. 78
with intent to harm, iv. *ib.*
with intent to murder, iv. *ib.*

Shop, breaking into a, iv. 107

Shore of the sea, i. 453

Short notice of trial, iii. 518, n.

Showing cause, iii. 628

Shrewsbury School, iii. 97

Shroud, stealing, iv. 118

Shrubs, injuries to, iv. 189
stealing, iv. 122, n.

Sic utere tuo, ut alienum non laedas, iii. 403

Sidney, Algernon, iv. 156

Sierra Leone, Act relating to, i. 106, n.

Sight, bills drawn at or after, ii. 117, n., 121

Signed bill by attorney or solicitor, iii. 218
Signet, privy, i. 619
Significavit, iii. 316
Signing judgment, iii. 566
of bill, by counsel, iii. 596
of deeds, i. 492, 494
of wills, i. 599
Sign manual, i. 619
Silk, injuring, iv. 139
stealing, iv. 120
Silver coin, offences as to, iv. 189
mines, ii. 549
Similiter, adding the, iv. 406
Simony, ii. 719; iv. 212
Simple contract, i. 433; ii. 55
debts, ii. 143
homage, ii. 400
larceny, iv. 120, 334
Sinecure rector, ii. 683
Singapore, Acts relating to, i. 106, n.
Single bond, ii. 108
issue, iii. 510
judge, trial before, iii. 554
Sinking fund, ii. 579, n.
Sister of deceased wife, marriage with, ii. 244, n.
Sites for institutions, iii. 102
for schools, iii. *ib.*
Sittings in London and Westminster, iii. 349
at nisi prius, iii. 349
in banc, iii. 350, 514
Six Articles, law of the, iv. 206
Slander, iii. 377—381
limitation of actions for, iii. 475
of title, iii. 379
Slaughtering horses, iv. 233
Slave trade, i. 108; iv. 221, n.
piracy, i. 110, n.
treaties, i. *ib.*
Slavery, ii. 226
Slight neglect, ii. 82, n.
Small boroughs, disfranchisement of, ii. 358
debt court for London, iii. 475, n.
—see SHERIFF'S COURT.
Small pox, iii. 171
tithes, ii. 726
Smoke Furnaces Acts, iii. 179, n.
Smuggling, iv. 262
Socage, i. 187
free, i. 205
guardian in, ii. 309
meaning of the term, i. 205, n.
villein, i. 187
Social contract, i. 29
economy, laws of, iii. 1—238
Society, benefit building, iii. 89—91
discharged prisoners aid, iv. 447, n.
friendly, iii. 86—89
illegal, iv. 197
incorporated law, iii. 217
industrial, iii. 90, 91
of antiquaries, iii. 6
origin of civil, i. 28
provident, iii. 90, 91
voluntary, iii. 17, 31
Sodomy, iv. 92
Sodor and Man, bishopric of, i. 116, n.; ii. 668
Sokemans, i. 206, 225
Soldiers, at parliamentary elections, ii. 374
exempted from toll, iii. 140
wandering, iv. 288, n.
Soldiers' will, ii. 593
Sole and separate use, settlement to, ii. 273
corporations, i. 353; iii. 4
Solemnities of will, ii. 187
Solicitor-General, iii. 273
of queen consort, ii. 445; iii. 274, n.
Solicitors, iii. 214
appearance by, iii. 271
of the Supreme Court, iii. 215, n., 272, n.
Solidus legalis, iv. 119, n.
Solitary confinement, iv. 447
Son assault demesne, plea of, iii. 374, 503, 510, n.
Sophia, princess, ii. 441
Sorcery, iv. 210, 408
Soul-scot, ii. 741
Sounding in damages, iii. 570

Soundness of wares, warranty of, ii. 76

South Australia, Acts relating to, i. 105, n.
Sea fund, ii. 578
Wales, highways in, iii. 138, n.

Southwell, iii. 14

Sovereign—see KING.
grant by, i. 618

Speaker of house of commons, ii. 382
of house of lords, ii. *ib.*

Speaking ill of the sovereign, iv. 168
with prosecutor, iv. 234

Special acceptance of bill, ii. 118
administration, ii. 198
agent, ii. 66
bail, iii. 498, n.
bailiffs, ii. 633
case, iii. 552, 567; iv. 338, n., 433
as to order of removal, iii. 59
in ejectment, iii. 622, n.
on appeal from magistrate, iv. 338, n.
reserved from the assizes or sessions, iv. 442
commission, iv. 315
constable, ii. 657
customs as to intestate effects, ii. 211
damage, iii. 379
defence in county court, iii. 288, n.
demurrer, iii. 501, n., 563
execution in detinue, iii. 424
indorsement on writ of summons, iii. 495
jurisdiction, iv. 324
jurors' lists, iii. 517
jury, iii. 517; iv. 308, n., 419
licence to keep public house open, iii. 199, n.
licence to marry, ii. 247, 255
occupant, i. 449, 682
plea, iii. 503; iv. 401
pleader, i. 20, n.
pleading, iii. 498, n.
property, ii. 5, 11, 82
referees, iii. 556
sessions, ii. 649
tail, i. 244
trusts, i. 371
verdict, iii. 552; iv. 433

Specially dangerous goods, carriage of, ii. 86, n.

Specialty, ii. 54
debts, i. 432; ii. 143
no priority in administration of assets, i. 434

Specification of patent, ii. 28

Specific delivery of goods sold, execution for, iii. 431
goods, sale of, ii. 70
legacy, ii. 205, 206, 207, n.
performance, i. 82; iii. 461
recovery of goods, ii. 70, n.; iii. 420, 424, 426

Spirits, sale of, iii. 195

Spiritual corporations, iii. 5
courts, iii. 305
lords, ii. 328
persons, assignment of patronage by, ii. 45, n.
tenure, i. 226

Splitting votes, ii. 364

Spoliation, iii. 312

Spreading false news, iv. 257

Spring assizes and quarter sessions, iv. 317, n.
guns, iv. 96

Springing use, i. 545

Squibs and fireworks, iv. 276

Stabbing, iv. 65, n., 370, n.

Stage coaches, iii. 180
laws relating to the, iii. 201—203
plays, iii. 201; iv. 272, n.

St. Albans, borough of, ii. 334, n.

Stallage, i. 664

Stamp Acts, i. 484, n.; iii. 571, n.
duties on bank notes, iii. 227, n.
revenue from, ii. 571, n.

Stamping the coin, ii. 522

Stamps on agreements, ii. 62, n.
on bills or notes, ii. 115, n., 121, n.
on deeds, i. 484

Standard of coin, ii. 523
weights and measures, ii. 383; iv. 265

Standing army, ii. 589; iv. 517
mute, iv. 396
orders of parliament, ii. 383

Stannaries, The, iii. 20, n.
court of, iii. 298

Staple commodities, i. 309; ii. 560
mayor of, i. 309
statute, i. *ib.*

Star Chamber, ii. 473; iv. 309, 376, 505, 513

Starrum, iv. 309, n.

Statement of bankrupt's accounts, ii. 158
of complaint, iii. 500

State officers, ii. 455—463, 622, n.; iv. 187

States, serving foreign, iv. 195

Stationers' Hall, ii. 37, 39

Statistical department of Board of Trade, ii. 462, n.

Statistics of registrar-general, iii. 237

Statues, injuries to, iv. 140

Statute, i. 68—80
conveyance by, i. 503
de donis, i. 242, 243; iv. 507
de mercatoribus, i. 311
de religiosis, i. 456
equity of, i. 77
for transferring uses into possession, i. 366
guardian by, ii. 310
judicially noticed, i. 618
law, revision of, Acts for, i. 69, n.
local, i. 70
manner of making, ii. 383
merchant, i. 297, 309; ii. 143
of amendment, iii. 563
of distribution, ii. 209
of extent, iii. 667
of frauds, i. 432, 507, 512, 515, 517, 523; ii. 51, 55, 70, 71
of fraudulent devises, i. 433
of jeofail, iii. 563
of limitations, iii. 466, 480, 481
of mortmain, i. 359
of præmunire, iv. 176
of quia emptores, i. 199, n., 227, 234, 272, 469
of treason—see TREASON.
of uses, i. 366; iv. 506
of wills, iv. 506

Statute, penal, iii. 479
personal, i. 70
private and public, i. 69
repealed, as to transfer of real property, i. 317, n.
relating to India, i. 114, n.
rolls, ii. 384
staple, i. 309; ii. 143; iii. 663; iv. 507
when it begins to operate, i. 72
when it binds the Crown, ii. 496

Staundeforde on criminal law, i. 51

Stay of execution in error, iii. 580

Stealing—see LARCENY.
an heiress, iv. 84
animals, ii. 7, 8; iv. 331
children, iv. 93
records, iv. 223
valuable securities, iv. 122

Steam engines, careless use of, iv. 271, n.
navigation, iii. 187
ships for passengers, iii. *ib.*

Stephen, king, ii. 528; iii. 325; iv. 496

Sterling metal, ii. 523

Steward, lord high, court of the, iv. 305
of Great Britain, iv. 302
of the university, iv. 326
manor court of the, iii. 279
of the household, iv. 325

Stint, common without, i. 653

Stipendary estates, i. 174
magistrates, ii. 645, n.

Stipend of curate, ii. 696

Stipulations in contract, not being of the essence thereof, iii. 430

Stirpes, succession per, i. 407; ii. 211

St. John, Oliver, iv. 245, n.

Stock, forging, iv. 143, n.
in funds, ii. 576
in trade, ii. 14
rating of, iii. 65, n.
jobbing, ii. 576, n.
may be charged with debts, iii. 588
of descent, i. 413
sale of, ii. 75
transfer of, ii. 305, n.

Stolen goods, receiving, iv. 136
sale of, ii. 74, 125

Stoppage, iii. 504, n.
in transitu, ii. 72

Stores, royal, iv. 194

Strangers, distraining goods of, iii. 248
in this country, ii. 496
property of, in bankrupt's possession, ii. 165

Strait Settlement, Acts relating to, i. 106, n.

Strangle, attempt to, iv. 78, 82

Streams, i. 659

Strict settlement, i. 333

Striking in courts of justice, iv. 224
in king's palace, iv. 186, 325
special jury, iii. 518

Study of the law, i. 1—20

Stupefying drugs, administration of, iv. 82

Sturgeon, ii. 19, n., 540

Sturges Bourne's Act, i. 121, n.

Style of partnership, ii. 99

Subinfeudation, i. 174, 186, 234

Subjection of wife to husband, iv. 32

Subjects, allegiance of, ii. 399—406
leaving the kingdom, ii. 503
of chancery jurisdiction, iii. 455.

Subjiciendum, habeas ad, iii. 643

Submission to arbitration, iii. 259

Subornation of perjury, iv. 243

Subpœna ad testificandum, iii. 531
duces tecum, iii. *ib.*
in chancery, iii. 325
on information, iv. 388

Subscribing a deed, i. 496
a will, i. 599; ii. 189
articles, ii. 661, 687, 695

Subsequent condition, i. 298, 299

Subsidies or taxes, ii. 556

Subsisting terms, i. 382

Subtraction of conjugal rights, ii. 238, n.
of fealty, iii. 409
of legacies—see LEGACIES, RECOVERY OF.
of real property, iii. 409
of suit and service, iii. *ib.*
of tithes, iii. 309

Succession ab intestato, ii. 210
duty, ii. 205, n., 572
of corporate property, iii. 16
per stirpes, i. 407
title by, ii. 16, n.
to an intestate, ii. 208—212
to the Crown, ii. 414—422; iv. 162

Successors, i. 455; iii. 16

Sudbury, disfranchisement of, ii. 334, n.

Sudden necessity, relief in case of, iii. 62

Sufferance, estate at, i. 293
wharves, ii. 500, n.

Suffocate, attempt to, iv. 78, 82

Suffragan bishops, i. 116; ii. 669, n.

Suffrage, household, ii. 362

Suggestion in replevin, iii. 616
of failure to try, iii. 518, 519
of right to have execution, iii. 592
on record by attorney-general, iv. 376

Suicide, ii. 640, n.; iv. 59—62

Suing in formâ pauperis, iii. 576

Suit and service, i. 180
at law—see ACTION.
in chancery, iv. 596—603
of court, iii. 409

Summary convictions, iv. 329—343
appeal against, iv. 338
jurisdiction, iv. 329—343, 449, n.
proceeding, iv. 329

Summing up by judge, iii. 548
evidence, iii. 530

Summons before a magistrate, iv. 336
of parliament, ii. 322, 370
to house of lords, ii. 606, 607
writ of, iii. 486

Sumptuary laws, iv. 282, n.

Sunday, ii. 73
arrest for crime on, iv. 347
dies non, iii. 485
in reference to bills and notes, ii. 123
profanation of, iv. 212
sale of beer, &c., on, iii. 197, 199
school exempt from rates, iii. 65

Sunday, Term beginning or ending on, iii. 485

Superannuation allowance, ii. 610, n.

Superintendent registrar, iii. 234.
certificate of marriage by, ii. 250

Superintendents, marine, iii. 151

Superintending constables, ii. 656

Superior courts, iii. 269, 318

Supersedeas of commission, ii. 647

Superstitious uses, i. 461; iii. 70

Supervision of police, iv. 452

Super visum corporis, ii. 638

Suppletory oath, iii. 538, n.

Supplies, appropriation of the, ii. 579, n.

Supply, bill of, ii. 387

Supra protest, accepting bill, ii. 122

Supremacy, oath of, ii. 401
of the Crown, ii. 704

Supreme Court of Judicature, i. 82; iii. 318—357
power in state, i. 28

Surcharge of common, iii. 412

Sur concessit, fine, i. 563
disclaimer, writ, iii. 410, n.
don, grant et render, fine, i. 563

Sureties for good behaviour, iv. 293—295
to keep the peace, iv. 295

Surety, ii. 105

Surgeons, college of, iii. 6, 205, 206
manslaughter by, iv. 69

Surname, change of, ii. 299, n.

Surplice fees, ii. 740; iii. 312

Surplus in bankruptcy, ii. 174

Surrebutter, iii. 507, n.

Surrejoinder, iii. *ib.*

Surrender, i. 522
by operation of law, i. 523
must be by deed, i. *ib.*
of bankrupt, ii. 158
of copyhold, i. 634
of outstanding term, i. 381

Surrender of renewable leases, i. 523, 524
to the use of will, i. 639

Surrogate's licence to marry, ii. 247

Survey of Great Britain, i. 87, n.
of ship by Board of Trade, iii. 154, 187

Surveyors of highways, iii. 133—137

Survival of right of action, iii. 370

Survivorship, i. 342, 352
between partners, ii. 14, 99

Suspension of canonries, ii. 750
of Habeas Corpus Act, i. 147
of right of action, iii. 368
pleas in, iii. 502

Suspicion, arrest upon, iv. 347, 351

Swans, ii. 6 n., 540, n., 548; iv. 116

Swarm of bees, ii. 5, n.

Swearing into office, ii. 622
profane, iv. 209
the jury, iii. 520; iv. 424
the peace, iv. 294
witnesses, iii. 535; iv. 431

Symbolum animæ, ii. 742

Syngrapha, i. 483

Synod, ii. 525

T.

Table of consanguinity, ii. 209
of descent, i. 391, 427
of precedence, ii. 615, n.

Tail, estate in—see ENTAILS.

Taking, unlawful, iii. 420; iv. 113
up dead bodies, iv. 284

Tales, iii. 528; iv. 424

Talionis lex, iv. 14

Talliages, ii. 556

Taltarum's case, i. 248

Tasmania, Acts relating to, i. 105, n.

Taxation, local, iii. 68, n.
modern system of, ii. 553

Taxes, imposition of, i. 165; ii. 554
permanent, ii. 554
revenue from, ii. *ib.*
settlement by payment of, iii. 54

Taxing costs, iii. 219, 492, n.

Telegraphs Act (1863), iii. 9, n.
injuring, iv. 331
post office, ii. 570, n.

Temporal corporations, iii. 6.
lords, ii. 330, 345

Temporalities of bishops, ii. 530, 673

Tenant at sufferance, i. 293
at will, i. 289
after possibility of issue extinct, i. 262
bound to warn landlord of ejectment, 624
by copyhold, i. 222
by copy of court roll, i. *ib.*
by elegit, i. 310
by knight service, i. 188
by the curtesy, i. 263
for life, i. 254
lessees of, i. 259
presumption as to death of, i. 255, n.
for years, i. 285
from year to year, i. 291
holding over, i. 295; iii. 624, n., 625
in antient demesne, i. 224
in common, i. 251
in dower, i. 266
in fee, i. 233
in frankalmoign, i. 226
in real action, iii. 605, n.
in tail, i. 241—see ENTAILS.
joint, i. 339
pur autre vie, i. 254
right, i. 225, n.
to the præcipe, i. 569

Tender, legal, ii. 521; iii. 225
of amends, iii. 383
of vote, ii. 371
plea of, iii. 505

Tenements, i. 169, 170
meaning of the word, i. 185

Tenendum of a deed, i. 487

Tenterden's (Lord) Act, iii. 477

Tenths, ii. 3, 531, 554

Tenure, barony by, ii. 606, n.
by cornage, i. 201
by divine service, i. 227
by earldom, ii. 605
copyhold, i. 214, 624
customary, i. 225
different kinds of, i. 187, 188
disturbance of, iii. 414

Tenure, feudal, i. 181; iv. 493
in burgage, i. 211; ii. 360
in capite, i. 186, 204
in chivalry, i. 188; ii. 584
in frankalmoign, i. 226
in grand serjeanty, i. 200, 210
in petit serjeanty, i. 210
perfect and imperfect, i. 247
socage, i. 188, 205; ii. 309
villein, i. 188

Tenures, concerning, i. 172

Term of years, i. 285, 288
meaning of the word, i. 286

Terms, iii. 482
provision as to, in Judicature Act (1873), iii. 486
in trust to attend the inheritance, i. 380

Terræ dominicales regis, ii. 534

Terre-tenant, ii. 215

Territorial titles, ii. 605

Test Act, ii. 708

Testament, i. 161, 588; ii. 178—see DEVISE and WILL.

Testamentary guardian, ii. 310
matters, iii. 304

Testamento annexo, administration cum, ii. 196

Testator, capacity to be, i. 591; ii. 186

Teste of a deed, i. 495
of an extent, iii 665
of a warrant, iv. 347
of a writ of execution, ii. 51

Testes, proof of will per, ii. 192

Testificandum, habeas ad, iii. 648

Testimony—see EVIDENCE.

Thanet, Isle of, i. 98
Lord, iv. 225, n.

Theatres, iii. 201
unlicensed, iv. 271

Theft—see LARCENY.
bote, iv. 232
from extreme want, iv. 35

Thellusson's will case, i. 555, n.

The New Will Act, i. 591

Theodosian code, i. 63
Thesaurus inventus, ii. 546
Things in action, ii. 166, n.
  personal, i. 167; ii. 2
  real, i. 167
    injuries to, iii. 385
Third class certificate in bankruptcy, ii. 161, n.
Thirty-nine Articles, The, ii. 702
Thorpe, chief justice, iv. 245, n.
Threatening letters, iv. 251
Threats, i. 140; iii 373; iv. 128, 129, 251
  extortions by, iv. 128
  or promises to prisoner, iv. 355
Tickets of leave, iv. 451, n.
Tidal river, i. 671
Tilt or tournament, iv. 53
Timber, iii. 406
Time, computation of, i. 282
  statement of, in indictment, iv. 368
Tin mines, ii. 550, n.
Tinners, iii. 299, n.
Tithes, i. 118
  commissioners, i. 643, n.; ii. 731
  commutation Act, ii. 731
  discharge from, ii. 726
  exemptions from, ii. 726
  extra-parochial, ii. 532, n.
  great, ii. 726
  in London, ii. 732, n.
  mixed, ii. 722
  of fish, ii. 732
  of minerals, ii. *ib.*
  origin of, ii. 723
  ouster of, iii. 498
  personal, ii. 722
  prædial, ii. *ib.*
  recovery of, iii. 311, 478, n.
  rectorial, ii. 726
  rent charge, ii. 732
  small, ii. 726
  subtraction of, iii. 309
  vicarial, ii. 726
Tithing, i. 124
Tithingman, ii. 653
Title, abstract of, i. 485, n., 507, n.
  Act to facilitate proof of, i. 694
  by act of law, i. 386, 387
  by act of party, i. 385
  by descent, i. 388, 434
  by escheat, i. 435
Title by gift, ii. 44
  by invention, ii. 25—43
  by purchase, i. 334, 385, 426, 544
  declaration of, i. 700
  documents of, stealing, iv. 132
  for sixty years, when to be shown, i. 485
  in general, i. 384
  of act of parliament, ii. 386, 388
  of plaintiff in ejectment, iii. 619
  registry of, i. 694
  to corporeal hereditaments, i. 384
  to Crown, ii. 413—433
  to incorporeal hereditaments, i. 681
  to orders, ii. 661
  to personalty, ii. 9, 16
  unity of, i. 340, 351
  warranty of, ii. 76
Titles of courtesy, ii. 610
  of dignity below nobility, ii. 612
  of nobility, i. 406, 424; ii. 330, 514, 601
  of worship, ii. 614
  registered, i. 700
  selling pretended, iv. 237
Tobago and Trinidad, Acts relating to, i. 106, n.
Toga virilis, ii. 613
Toleration Act, ii. 707; iv. 517
Toll collectors, iii. 140
  exemptions from, iii. *ib.*
  incident to market, &c., i. 664
  thorough, iii. 129, n.
  traverse, iii. 129
  turnpike, iii. 139
Tolling right of entry, iii. 391
Tolls, i. 664
Tonnage duties, ii. 561
Tools, exportation of, iv. 267, n.
Tortious operation of a feoffment, i. 510
Torts, actions on, iii. 363
Torture, i. 144; iv. 392, n.
Total loss, ii. 134
Totnes, disfranchisement of, ii. 334, n.
Tournaments, iv. 53.
Tourn, sheriff's, iv. 321
Tout temps prist, iii. 607
Town causes, iii. 516, 517
  clerk, iii. 36
  councillors, iii. 35

Town, definition of, i. 124
treasurer, iii. 86

Towns Clauses Act, iii. 9, n.
corporate, i. 124; iii. 32
number of, i. 125

Trade, Board of—see BOARD OF TRADE.
coasting, iii. 145, n., 159
marks, counterfeiting, iii. 428; iv. 145
offences against public, iv. 262—267

Trader having privilege of parliament, ii. 151
debtor summons, ii. 152
in service of ambassador, ii. 490

Traders, who may be bankrupt as, ii. 149

Tradesmen, ii. 663

Trade Union Act (1871), iv. 241

Trades unions, iv. 241, n.

Trading by clergymen, ii. 663

Training to arms, i. 150

Tramways, iii. 180, n.

Transfer of Land Act, i. 694
of property, origin of, i. 160
Act to simplify, i. 317, n.
of stock, restraining in equity, iii. 459
of things personal, ii. 44

Transitory actions, iii. 366

Transitu, stoppage in, ii. 72

Translations, copyright in, ii. 42

Transportation beyond the seas, i. 148; iv. 449—see PENAL SERVITUDE.

Traps, man, iv. 96

Traverse in pleading, iii. 504
of bill in chancery, iii. 599
of indictment, iv. 419
toll, iii. 129

Treason, ii. 448, 449, 484; iv. 149—164, 199
bail for, iv. 356
constructive, iv. 150
copy of indictment in, iv. 420
corruption of blood in, i. 442; iv. 164, n., 454
counsel for prisoners accused of, iv. 434

Treason, evidence of wife admitted in, iv. 429
felony, iv. 167
forfeiture in, i. 200, 360, 377; iv. 166, 454
high, iv. 150, n.
impeachment for, iv. 289, 425
indictment for, iv. 364
in killing chancellor, &c., iv. 159
limitation in, iv. 163
list of witnesses in, iv. 420
misprision of, iv. 165, 426, 431
no accessories in, iv. 40
not triable at sessions, iv. 318
offences formerly amounting to, iv. 150, 219
overt acts in, iv. 154, 426
out of realm, iv. 364
pardon in, iv. 471
petit—see PETIT TREASON.
punishment in, iv. 164
trial in, iv. 420
trial of peers and peeresses for, iv. 305
two witnesses required to prove, iv. 426
venue in, iv. 368

Treasonable imagination or intent, iv. 153

Treasure hidden, ii. 546
trove, ii. 539, 546, 641; iv. 199

Treasurer of a borough, iii. 157
of the household, iv. 325
the lord, ii. 528; iv. 159

Treasury, commissioners, ii. 528, 563
first lord of the, ii. 458

Treaties, ii. 490
as to fisheries, iii. 167

Treating at elections, ii. 373

Treble costs, iii. 574, n.

Trebucket, iv. 277

Trees are part of freehold, ii. 215
destroying, iv. 139
injuring, iv. 331
stealing, iv. *ib.*

Trespass, iii. 363, 364, 398
ab initio, iii. 257, 401
action of, iii. 364
by cattle, 400
by or against executor or administrator, iii. 376
in pursuit of game, ii. 22
justifiable, iii. 400

Trespass on the case, action of, iii. 363, 364, 375
quare clausum fregit, iii. 398, 618, 624

Trespassers, engines against, iv. 96

Trial and conviction, iv. 407—439
and evidence, iii. 512—557
at bar, iii. 514; iv. 308, 375, 418
at nisi prius, iii. 514; iv. 308, 314, 385
before a judge, iii. 554
referees, 555
the sheriff, iii. 515, n., 570
by certificate, iii. 513, n.
by combat, iv. 411, 550
by corsned, iv. 410, 490
by inspection, iii. 513, n.
by jury—see JURY, TRIAL BY.
by ordeal, iv. 407, 490
by proviso, iii. 518
by record, iii. 513, n.
by wager of battel, iii. 513, n.; iv. 411, 500
by wager of law, iii. 424, 513, n.; iv. 490
by witnesses, iii. 513, n.
in quare impedit, iii. 611
new, iii. 558; iv. 434
notice of, iii. 518
of peers, iv. 302—307, 416
of the pix, ii. 523, n.
per pais, iii. 513

Tribonian, i. 63

Tribunals, criminal, iv. 298—328

Triennial elections, ii. 394, 599; iv. 513, 517

Triens, i. 267

Trientes, ii. 91

Trina admonitio, iv. 391

Trinity House, ii. 502; iii. 156, 158

Trinoda necessitas, i. 227; ii. 498; iii. 129

Triors, iii. 522, 526

Trithing, i. 127

Trover, iii. 363, n., 425

True bill, finding, iv. 367

Trust, active, i. 371
cestui que, i. 372
charitable, iii. 77—80
cognizable in equity, i. 82, 373; iii. 448, 456
curtesy in, i. 377, 379
declaration of, i. 374
deed, arrangement by, ii. 192

Trust, dower in, i. 377—379
enforcement of, iii. 458
escheat of, i. 377
estate, i. 372
executory, i. 374
forfeiture of, i. 377
funds, fraudulent conversion of, iv. 133
how created, i. 372
how it may be created or assigned, i. 379
how it may be limited, i. *ib.*
implied, i. 374
in equity, i. 376
investment of, iii. 459
meaning of the word, i. 374
of goods to use of donor, ii. 47
of personal chattels, i. 373
passive, i. 374
protection of, iii. 458
resulting, i. 375
special, i. 371
to attend inheritance, i. 380
to support contingent remainders, i. 332

Trustee Act (1850), i. 376, 446
attainder of, i. 377
capacity to be, i. 362
conviction of, i. 380
definition of, iv. 133, n.
dying intestate and without heir, i. 376
enactments to protect, i. 376, 377; iii. 458
frauds by, iv. 133
his estate in the land, i. 357, 375
indictment of, iv. 133, 134
of bankrupt, ii. 156
of turnpike road, iii. 138

Trustees, devises to, i. 605
statutable provisions with respect to, i. 376, 377

Truth of defamatory words, iii. 380

Tudor, Owen, ii. 449

Tumbrel, iv. 269, n.

Tumultuous petitioning, iv. 255

Turbary, common of, i. 653

Turning to a right, iii. 390

Turnpike Acts, iii. 131, 138
gates, injuries to, iv. 140
roads, iii. 131, 132, 138
in South Wales, iii. 138, n.
tolls, iii. 139
trusts, iii. 131, 138

Twelve Tables, law of the, i. 62
Two witnesses, when required, iii. 537, 538, n.; iv. 421
Tyranny of judges, iv. 246

U.

Ubiquity, legal, of sovereign, ii. 506
Ultimum supplicium, use of, iv. 19
tempus pariendi, ii. 287
Umpire, iii. 260
Unanimity of jury, iii. 549; iv. 367
Uncertain services, i. 187
Uncertificated attornies, iii. 217, n.
Unchastity, imputing, iii. 378, 379, n.
Unclaimed dividends, ii. 576, n.
Uncle and nephew in descent, i. 408
Unde nihil habet, dower, iii. 605
Under secretaries of state, ii. 459, n.
sheriff, ii. 631
Underwood, injuries to, iv. 139
Underwriters, ii. 129, 133
Undue influence at elections, ii. 376
Unfitness of clerks, ii. 693
Unfunded debt, ii. 574
Uniformity, Acts of, ii. 707
of process, iii. 487, 490
Uninhabited country, i. 102
Union of benefices, ii. 692
of Ireland, i. 96; iv. 519
of parishes, iii. 50
of Scotland, i. 87; iv. 517
Relief Acts, iii. 51, n.
Unions, poor law, iii. 50
Unity of titles, i. 340, 351
Universitates, iii. 3
Universities, colleges, in, iii. 27
copyright vested in, ii. 40
corporate bodies of the, iii. 27
courts of the, i. 67; iii. 299; iv. 325, 326, n.
elections for the, ii. 372
members for the, ii. 334, 358
Universities, rights of, as to popish livings, iii. 419
Test Acts, ii. 708
University of Cambridge—see CAMBRIDGE, UNIVERSITY OF.
of Durham, iii. 76
of London, i. 20, n.; ii. 359, 372; iii. 76
of Oxford—see OXFORD, UNIVERSITY OF.
press, iii. 192
Unknown name of person indicted, iv. 118, 399
Unlawful assemblies, iv. 197, 254
combinations, iv. 197
detainer, iii. 420
oaths, iv. 197
taking, iii. 423
"Unlimited" companies, iii. 22
Unliquidated damages, iii. 529, n.
Unnatural offence, iv. 92
Unreasonable distress, iii. 253
Unseaworthy ships, iii. 153
Unthrift, ii. 513, n.
Unwholesome provisions, selling, iv. 268
Urban sanitary district, iii. 176, 177
Urgent necessity, relief in case of, iii. 62
Usage of trade, i. 55
Use, cestui que, i. 361, 363
curtesy in a, i. 363
dower in a, i. 362
seisin to a, i. 362, 368
upon a use, i. 369
Uses and trusts, i. 356
charitable, i. 461; iii. 70
contingent, i. 364
conveyances under statute of, i. 529–556
covenant to stand seised to, i. 361
executory, i. 345, 546
feoffee to, i. 361
feoffment to, i. 532
grant to, i. 539
history and origin of, i. 358
implied, i. 361
in esse, i. 364
in futuro, i. *ib.*
in possibility, i. *ib.*

Uses, manner of creating, i. 361
nature of, i. 363
properties of, i. 364
reduplication of, i. 372
repugnant, i. 370
resulting, i. 361
secondary, i. 546
shifting, i. *ib.*
springing, i. 545
statute of, i. 366
superstitious, i. 461; iii. 70
what capable of being held to, i. 360
what may be conveyed by, i. *ib.*
what the statute executes, i. 367
who capable of holding to, i. 362

Usque filum aquæ, i. 659

Usucapio, i. 684, n.

Usura maritima, ii. 93

Usurpation by the Exchequer, iii. 338, n. 490
by the Queen's Bench, iii. 333, n., 490
of presentation, iii. 414, 474, 608

Usury, repeal of the laws against, ii. 96

Usus fructus, i. 357

Uterinus frater, i. 424

Uttering false coin—see COIN.
forged documents, iv. 143

V.

Vacancy of the throne, ii. 324, 436

Vacant possession, iii. 621

Vacarius, Roger, i. 12

Vacation, iii. 485, 581

Vaccination Acts, iii. 171
compulsory, iii. *ib.*

Vadium mortuum, i. 304
vivum, i. *ib.*

Vagabonds, iii. 57; iv. 212, 288

Vagrancy, ii. 291, 297; iii. 122; iv. 288

Valor beneficiorum, ii. 533

Valuable consideration, i. 497; ii. 59, 126
securities, stealing, iv. 122, 437

Valuation of Pope Nicholas, ii. 532

Value, allegation of, in indictment, iv. 371
of marriage, i. 193
received, bill for, ii. 126; iii. 435, n.

Valuers, inclosure, i. 657

Valvasors, ii. 612

Vancouver's Island, i. 106, n.

Van Diemen's Land, i. 105, n., 106, n.

Variances, iv. 337, n., 371

Vassal, i. 174

Vaughan's Reports, i. 50

Vegetable productions, injuries to, iv. 140, 331

Venditioni exponas, writ of, iii. 585

Venire facias, writ of, iv. 383, 388

Venison, iii. 317, n.

Ventilation of ships, iii. 153

Ventre inspiciendo, writ de, ii. 287; iv. 467

Ventre sa mère, children in, i. 139

Venue, change of, iii. 501
in an action, iii *ib.*
in an indictment, iv. 368.

Verbal abuse—see SLANDER.
contract, ii. 55

Verderers, iii. 283

Verdict, iii. 550, 551; iv. 433
false, iii. 561 n.; iv. 226, n., 434
privy, iii. 551, n.
special, iii. 552; iv. 433

Vert, venison, and covert, iii. 317, n.

Vested legacy, ii. 207
remainder, i. 326

Vestry, i. 120; iii. 47
clerk, i. 122 n.; ii. 699, n.

Vetera statuta, i. 68, n.

Veto of Crown, ii. 503

Vicar, choral, iii. 5, n.

Vicarages, ii. 682

Vicarial tithes, ii. 681

Vice-admiralty courts, iii. 345

Vice-chancellor, iii. 331
of Oxford, iv. 336

Vicecomes, i. 126; ii. 604
Vice-warden of the stannaries, iii. 298, 299
Vicinage, common because of, i. 651
Vicineto, jury de, iii. 522, n.
Victoria, Acts relating to colony of, i. 106, n.
Victualling houses, iii. 195
Vidames, ii. 612
Vi et armis, iii. 364; iv. 372
View by jury, iii. 521
of frank pledge, iv. 321
Vigilantibus, non dormientibus, jura subveniunt, iii. 467
Vill, i. 125
Villanum soccagium, i. 223
Villein, i. 215
in gross, i. 216
regardant, i. *ib.*
services, i. 187
socage, i. 187, 223
Villenage, i. 187
privileged, i. *ib.*
pure, i. *ib.*
Villenous judgment, iv. 239
Vinculo matrimonii, divorce à, ii. 277
Vindicatory sanction of laws, i. 37
Viner's Abridgment, i. 52
Violation of safe conduct, iv. 217
of the Princess Royal, ii. 450
of the Queen Consort, ii. 448
of women, iv. 84
Viscount, ii. 604
Visitatio Dei, iv. 391
Visitation books of heralds, iii. 335, n.
by archbishop, iii. 668
of a diocese, ii. 676
of an archdeaconry, ii. 678
of a province, ii. 668
of corporation, iii. 25
of dean and chapter, ii. 668
of lunatics, ii. 513; iii. 119—121
Visiting justices of prisons, iii. 123
Visitor of colleges, iii. 27
of a corporation, iii. 25
of eleemosynary corporation, iii. 26, 78.
of hospitals, iii. 27.
of lunatic asylums, iii. 115, 119.
Vivâ voce examination, iii. 547
Vivo vadio, estate in, i. 304
Void and voidable, difference between, i. 474
Voir dire, iii. 535, n.
Volenti non fit injuria, iii. 442
Voluntary affidavits, iii. 628, n.
associations, iii. 17, 31
conveyance, i. 497
deed, i. *ib.*
ecclesiastical jurisdiction, iii. 309, n.
escapes, iv. 228
oaths, iv. 242
settlement, ii. 275
waste, i. 257, 290, 293; iii. 405.
winding-up, iii. 25
Volunteer seamen, ii. 595
Volunteers, i. 150, n.; ii. 588; iii. 86, n., 148
Voting at municipal election, iii. 35
at parliamentary elections, ii. 364, 365, 369—377
at vestries, i. 121
in parliament, ii. 382
papers at university elections, ii. 371, 372, 373, n.
Vouchee, common, i. 569
Voucher in recoveries, i. *ib.*
to warranty, i. 568
Vox populi vox Dei, iv. 163
Vulgaris purgatio, iv. 407

W.

Wager of battel, iii. 513, n.; iv. 411, 500
of law, iii. 425, 513, n.; iv. 490
Wagering policies, ii. 137
Wagers, illegal, iv. 274
Wages, ii. 227, 229
infant may sue for, ii. 303, n.
Waifs, ii. 539, 547; iii. 258
Wainagium, iv. 446, n.
Waiver of condition, i. 303, 304
Wales, i. 83; iv. 487, 502
former courts of, iii. 317, n.

Wales, members for, i. 86
prince of, i. 84; ii. 450; iv. 151
princess of, ii. 450; iv. 156

Wallingford, compromise made at, ii. 424

Waltham, chancellor, iii. 325

Wandering soldiers and marines, iv. 288, n.

Wanton and furious driving, iv. 282

Wapentakes, i. 126

War and peace, right of making, ii. 490, 491
articles of, ii. 590
Department Stores Act (1867), iv. 195
levying against the king, iv. 157
prize of, iii. 343.
secretary for, ii. 459

Ward by constables, ii. 652, n.; iv. 351
guardian and, ii. 302—315
of court, ii. 312

Wardholding, i. 204, n.

Wards and liveries, court of, i. 192
in boroughs, iii. 35, n.
stealing, iii. 440

Wardship in chivalry, i. 190
in copyholds, i. 221; ii. 309, n.
in socage, i. 207; ii. 309

Warehousing ports, ii. 500, n.
owners, ii. 86, n.
regulations, ii. 565

Warrant, arrest by, i. 145, 147; iv. 336
arrest without, iv. 348
backing, iv. 347
bench, iv. 381
for pardon, iv. 473
general, iv. 345, n.
justices, iv. 382
of attorney, iii. 571, n.
of removal, iii. 58
on indictment found, iv. 382
to bring before a magistrate, iv. 336
when it may issue, iv. 336, 345

Warranty, collateral, i. 489
lineal, i. *ib.*
of lands, i. 488
of quality, ii. 77
of title, ii. 76
on sale of goods, ii. 77

Warren, i. 670; ii. 22
fowls of, i. 670
free, i. *ib.*

Waste, ii. 219; iii. 405—409
action of, iii. 408
by conversion, iii. 406
by opening soil, iii. *ib.*
by tenant at will, i. 290
by tenant for life, i. 259; iii. 407, 453
by tenant for years, i. 288
equitable, i. 257, n.
grant of portion of, i. 639
inclosure of, i. 655, 657
in copyhold, i. 628
injunction to stay, iii. 408
of a manor, i. 215, 639, 650
of timber, iii. 406
permissive, i. 257, 288, n.; iii. 405
remedies for, iii. 407
voluntary, i. 257; iii. 408
without impeachment of, i. 257; iii. 407
year, day and, i. 444; iv. 458

Watch and ward, ii. 652, n.
committee, ii. 656
rate, iii. 39, n.

Watchmen, ii. 658

Water, i. 155, 168, 659, 691, 692
men, iv. 214, n.
metropolitan supply of, iii. 179, n.
ordeal, iv. 408

Watercourse, i. 659, 693

Waterworks Clauses Acts, iii. 9, n.

Ways and means, committee of, ii. 554
disturbance of, iii. 413
right of, i. 658

Waywardens, iii. 137

Weapons, carrying dangerous, iv. 257

Wearing apparel of bankrupt, ii. 166

Weights and measures, ii. 516
false, iv. 265, 321

Welsh judicature, iii. 317, n.

Weregild, iv. 58, 479, 488

Wesleyans, ii. 706, n.

Western Australia, i. 105, n.

West Indies, i. 108—110; ii. 461, n.

Westminster, city of, i. 125, n.
courts at, iii. 340
formerly a bishop's see, i. 125, n.
school, iii. 97
sittings, iii. 349

Westmoreland, shrievalty of, ii. 624, n.

West-Saxon Lage, i. 42; iv. 487

Whale, ii. 19, 448, 540

Wharfs, ii. 501
larcenies from, iv. 124

Whipping, punishment by, iv. 333, 443, n., 448

White Friars, iv. 227, n.
rents, i. 676

Whole blood, i. 417

Who may be bankrupt, ii. 148

Widow entitled to administer to husband, ii. 193
pauper, iii. 61, n.
special customs as to, ii. 212, n.

Widow's chamber, ii. 212, n.

Wife and husband, ii. 238—see HUSBAND AND WIFE, FEME COVERT.
abduction of, iii. 437
battery of, iii. 439
coercion of, iv. 32
defence of, iv. 51
evidence of, iii. 534; iv. 429
sister of, marriage with, ii. 244, n.

Wight, Isle of, i. 98

Wild, Jonathan, iv. 231
fowl, property in, iv. 116
Birds Protection Act, ii. 21, n.

Wilful perjury, iv. 243—see PERJURY.

Will Act, new, i. 594
and administration, ii. 178—213
as affecting the realty, i. 588
by feme covert, ii. 186
defect of, when excuse for crime, iv. 23
destroying, iv. 122, n.
estate at, i. 289

Will, execution of a, ii. 187
forging, iv. 144, n.
how proved, ii. 201
must be written, ii. 189
nuncupative, ii. 188, 593
of personalty, not affected by domicile, ii. 189, n.
of the lord, i. 222
or testament, i. 588
proving in chancery, iii. 463, n.
solemnities required for a, i. 593—601; ii. 187
statute of, i. 593, 596
stealing, iv. 122, n.
title by, ii. 178
witnesses to, i. 596, 599; ii. 189
And see DEVISE.

William the Conqueror, ii. 422; iv. 490

Winchester bushel, ii. 519, n.
school, iii. 76, 97
standard formerly kept at, ii. 517

Winding-up of companies, iii. 24

Windows, tax on, iii. 525, n.

Wine, adulteration of, iv. 269
and Beerhouse Acts, iii. 195, 198

Winter circuit, iii. 351, n.; iv. 313, n.

Witchcraft, iv. 210

Witches, drowning of, iv. 408

Withdrawal of juror, iii. 550
of record, iii. 568, n.

Withernam, goods taken in, iii. 423, n.

Witness, single, iii. 537

Witnesses, iii. 531
attachment of, iii. 531
commission to examine, iii. 532
depositions of, iii, 531
examination of, iii. 533
expenses of, iii. 531
for party charged before justices, iv. 354
for prisoner tried for felony iv. 430
interested, iii. 533
intimidating, iv. 226
not bound to criminate themselves, iii, 534
oath to, iii. 535; iv. 431

Witnesses, privileges of, iii. 536
tampering with, iv. 226
to a deed, i. 495
to a will, i. 596, 599
to character, iv. 432
trial by, iii. 513, n.
two required in treason and perjury, iv. 426
when excused from taking an oath, iii. 535; iv. 426, n.
who may be, iii. 533
wives and husbands as, iv. 429
And see EVIDENCE.

Wittenagemote, ii. 319, n.; iii. 335; iv. 488

Woking, convicts at, iii. 126, n.

Women, abduction of, iv. 84
burning for treason, iv. 77, n.
defilement of, iv. 85
franchise of, ii 364, n.
may be overseers, iii. 43, n.
may be sheriffs, ii. 624, n.
may vote at municipal elections, iii. 34, n.
outlawry of, iv. 383, n.

Woods, commissioners of, ii. 535, n.

Woollen goods, injury to, iv. 139
stealing, iv. 120

Words, defamatory, iii. 377—381—see SLANDER.
of art in indictments, iv. 369
treasonable, iv. 155

Workhouses, union, iii. 50

Workmen—see LABOURERS.

Works and public buildings, ii. 535, n.
of art, injuries to, iv. 140

Workshops, iii. 178, n.

Worship, certifying places of, ii. 707
disturbing divine, ii. 699; iv. 250
titles of, ii. 614

Worthiest of blood, i. 402

Wounding, iii. 373; iv. 81

Wreck, ii. 539, 641; iii. 342
destroying, ii. 545; iv. 104

Wreck, found, ii. 544
plundering, ii. 545; iv. 124
receivers of, ii. 544

Wrecking, offence of, iv. 140

Writ, close, i. 619
de hæretico comburendo, ii. 705; iv. 204, 205, n., 515
de ventre inspiciendo, ii. 287
in ejectment, iii. 621
of admeasurement of pasture, iii. 412, n.
of advowson, iii. 415
of assistance, iii. 602
of capias, iv. 382, 505
of certiorari, iii. 59, 422
of deceit, i. 640, n.
of election, ii. 370
of elegit, i. 310; iii. 586
of error, iii. 578, n.; iv. 463
of estrepement, iii. 408, n.
of execution, ii. 51; iii. 582
of fieri facias, iii. 585
of inquiry, iii. 570
of levari facias, iii. 585
of ne exeat regno, i. 148; ii. 504
of ne injustè vexes, iii. 410, n.
of novel disseisin, iii. 413, n.
of partition, i. 344, 355
of pone, iii. 280
of quod permittat, iii. 415, n.
of recordari, iii. 423, n.
of restitution, iv. 437
of revivor, iii. 591
of right, iii. 392, 415, n; iv. 411
of right of dower, iii. 361, 397, 605, n.
of scire facias—see SCIRE FACIAS.
of summons, iii. 486
in dower, iii. 605
in quare impedit, iii. 608
of trespass on the case, iii. 364
of trial, iii. 515, n.
of trial to sheriff, ii. 628
original, iii. 489, 605, 608
peers made by, ii. 606

Writings, libellous, iv. 258—260—see LIBEL.
obligatory, ii. 108
treasonable, iv. 155

Written contract, ii. 55
conveyances, i. 507
evidence, iii. 545, 547
slander—see LIBEL.

Wrongs, i. 137; iii. 240—see CRIMES.

Y.

Yarmouth, disfranchisement of, ii. 334, n.

Year and a day, i. 565; ii. 542, 543; iv. 70
day and waste, i. 444; iv. 458
forfeiture of lands for, i. 444
legal meaning of, i. 282
tenancy by the, i. 291
to year, tenant from, i. *ib.*

Year-books, i. 49

Yearly tenancy, i. 291
certificate of attorney, iii. 217

Years, estates for, i. 282

Yelverton's Reports, i. 50

Yeoman, ii. 617

Yeomanry, ii. 617; iii. 86, n., 140, n.

York and Lancaster, houses of, ii. 427; iv. 152
Archbishop of, ii. 353; iii. 306
province of, convocation for, ii. 211, 212

Yorkshire, registration of deeds in, i. 613

Z.

Zingari, iv. 288, n.

LONDON:

PRINTED BY C. ROWORTH AND SONS,
NEWTON STREET, HIGH HOLBORN.

A

Catalogue

OF

LAW WORKS

PUBLISHED BY

MESSRS. BUTTERWORTH,

Law Booksellers and Publishers

TO THE QUEEN'S MOST EXCELLENT MAJESTY

AND TO

H.R.H. THE PRINCE OF WALES.

"Now for the Laws of England (if I shall speak my opinion of them "without partiality either to my profession or country), for the matter and "nature of them, I hold them wise, just and moderate laws: they give to God, "they give to Cæsar, they give to the subject what appertaineth. It is true "they are as mixt as our language, compounded of British, Saxon, Danish, "Norman customs. And surely as our language is thereby so much the richer, "so our laws are likewise by that mixture the more complete."—LORD BACON.

1874.

7, FLEET STREET, LONDON, E.C.

Index to Catalogue.

Accounts, PAGE
Solicitors'. Coombs .. 27
Law of. Pulling ... 36
Actions at Law.
Browne 37
Kerr 17
Lush 13
Williams 33
Admiralty,
Practice. Coote ... 10
Prize Law. Lushington 27
Alabama Claim.
Law of 35
Aliens. Cutler 29
Arbitrations. Redman 32
Arbitrations (Masters and Workmen).
Lovesy 27
Articled Clerk.
Examination Journal 7, 39
Handy Book. Mosely 21
Student's Guide. Benham 17
Attachment,
Foreign. Brandon ... 23
Awards. Redman ... 32
Banking. Grant ... 4
Keyser ... 37
Bankruptcy.
Bulley & Bund .. 27
County Courts. Davis 5, 39
Linklater 36
Robson 26
Bar. Pearce 35
Smith 34
Bar Examination Journal .. 32, 39
Barbados, Law of ... 35
Belligerents.
Hamel 35
Phillimore 19
Bills of Exchange.
Grant 4
Bills of Sale. Hunt ... 30
Blackstone. Stephen's 4
Blockade. Deane ... 36
Bookkeeping, Solicitors'.
Coombs 27
Boundaries. Hunt ... 11
Brokers. Keyser ... 37
Carriers,
Inland. Powell ... 33
Railway. Shelford ... 25
Chamber Practice,
Common Law.
Parkinson 26
Chancery Practice.
Goldsmith 16
Hunter 11
Drafting. Lewis ... 16
Channel Islands.
Bowditch 36
Charitable Trusts.
Tudor 18
Chart of Descents.
Fearne 37
Hindu of Inheritance 37
Church Seats. Heales 14
Church Building.
Trower... 28
Civil Law. PAGE
Tomkins and Jencken 18
Civil Service Exam. (Indian). Cutler ... 35
Circumstantial Evidence.
Wills 10
Code, English Law.
Blaxland 37
Collieries. Bainbridge.. 33
Colonial Law. Barbados 35
Commentaries.
Phillimore's, International 19
Stephen's Blackstone's 4
Commercial,
Law. Chitty... ... 37
Treaties. Hertslet ... 28
Forms. Crabb ... 20
Common Form Practice.
Coote 8
Common Law,
At Chambers.
Parkinson 26
Costs.
Gray... 35
Pleading.
Chitty, jun.... ... 22
Greening 36
Williams 33
Practice.
Dixon 13
Kerr 17
Lush 13
Companies. Shelford .. 8
Compensation,
Law of.
Ingram 29
Shelford 25
Consolidation Acts.
Shelford 25
Conspiracy.
Law of. Wright ... 30
Constitution. May ... 6
Stephen 4
Contraband of War.
Deane 36
Moseley 36
Contracts,
Specific Performance.
Fry 13
Conveyancing,
Introduction to.
Lewis 16
Practice.
Barry 16
Rouse 12
Smith 30
Tudor 17
Forms.
Christie 20
Crabb 20
Kelly 6
Rouse 12
Shelford 20
Convictions (Summary),
Synopsis of. Oke ... 24
Forms. Oke 24
Co-operative Societies.
Brabrook 12
Copyholds,
Enfranchisement. Rouse 21
Law of. Scriven ... 23
Coroner. Baker ... 36
Corporations, PAGE
In General. Grant ... 22
Municipal. Sewell ... 37
Costs,
Law of. Gray ... 35
County Courts.
Davis 5, 39
Equity and Bankruptcy.
Davis 5
Criminal Law.
Davis 34
Oke 24
Curates. Field 28
Deeds. Tudor 17
Descents. Fearne ... 37
Divorce.
Practice. Browning .. 23
Domestic Servants.
Baylis 10
Draftsman (The)
Kelly 6
Drainage. Woolrych ... 22
Easements. Latham ... 18
Washburn... 36
Ecclesiastical,
Practice. Coote... ... 36
Judgments.
Burder *v*. Heath ... 38
Gorham *v*. Bp. of Exeter 38
Hebbert *v*. Purchas ... 38
Long *v*. Cape Town ... 38
Martin *v*. Mackonochie 38
Westerton *v*. Liddell ... 38
Election,
Law. Davis... ... 23
England,
Laws of. Blackstone ... 4
Francillon ... 35
Stephen .. 4
English Bar. Pearce ... 35
Smith ... 34
Equity,
Doctrine and Practice of.
Goldsmith 16
Draftsman. Lewis ... 16
Pleader. Drewry ... 22
Suit in. Hunter ... 11
See Chancery.
Evidence,
Circumstantial. Wills 10
County Court. Davis 5
Indian. Field ... 34
Law of. Powell ... 32
Wills. Wigram ... 33
Examinations.
Preliminary.
Benham ... 17, 40
Journals 7, 32, 39, 40
Intermediate and Final.
Mosely 21
Fences. Hunt 11
Fisheries, *Salmon*. Bund 5
Oke 24
Foreshores.
Hunt 11
Williams *v*. Nicholson 35
Forms,
Conveyancing. Crabb .. 20
Rouse 12
County Courts. Davis 5
Magisterial. Oke ... 24
Pleading. Greening 36
Probate. Chadwick 26

PAGE

Frauds. Hunt 30
Friendly Societies.
Brabrook 12
Gaius' Roman Law ... 19
Game Laws. Oke ... 24
Gaming. Edwards ... 37
Gas Companies Acts.. 30
Gavelkind. Robinson... 37
Guernsey (Law of).
Bowditch 36
Highways. Glen ... 31
House of Lords,
Practice. May ... 6
Digested Index to Cases.
Clark 15
Idiots. Phillips 14
Income Tax Laws.
Dowell... 8
Indian Evidence.
Field 34
Indian Penal Code.
Cutler and Griffin ... 34
Indian Statute Law.
Field 34
Industrial and Provident Societies.
Brabrook 12
Inns, Law of. Oke ... 24
Institutes of Public Law.
Nasmith 9
Intermediate Examination. Bedford ... 14
International Law.
Deane 36
Hamel 35
Phillimore 19
Jersey (Law of).
Bowditch 36
Joint Stock.
Banks. Grant ... 4
Companies. Shelford 8
Jurisprudence.
Form of Law. Holland 32
Justice of Peace. Oke 24
Land Settlement, Ancient 36
Landlord and Tenant.
Fawcett 9
Law Exam. Journal 7, 39
Law Studies.
Cutler's Lecture ... 35
Francillon 35
Mosely 21
Smith 34
Stephen's Blackstone 4
Leading Cases,
Real Property. Tudor 17
Leases. Crabb 20
Rouse 12
Legacy Duties. Shelford 21
Legitimacy.
Gardner Peerage ... 35
Life Assurance. Blayney 37
Licensing Laws. Oke .. 24
Local Government. Glen 31
Lords Chancellors, &c.,
Catalogue of. Hardy 37
Lord Mayor's Court.
Brandon 23

PAGE

Lunacy. Phillips ... 14
Magisterial Law,
Acts. Davis 34
Practice. Oke ... 24
Forms. Oke... ... 24
Maritime Warfare.
Deane 36
Hamel 35
Marriage Acts. Burn .. 37
Master and Servant.
Baylis 10
Davis 22
Master and Workmen.
Lovesy 27
Mercantile Accounts.
Pulling 36
Militia Laws. Dwyer... 37
Mines Drainage.
Underhill 5
Mines and Minerals.
Bainbridge 33
Mortgages. Fisher ... 9
Rouse ... 12
Municipal Elections.
Sewell 37
Naturalization. Cutler 29
Negligence. Saunders .. 29
Neutrals. Phillimore ... 19
Nisi Prius. Leigh ... 36
Nuisances. Glen .. 31
Parliamentary.
Clifford & Stephens ... 14
Davis 23
May 6
Partnership. Dixon ... 13
Pothier ... 37
Patents. Norman ... 35
Peerage Claim.,
Lemarchant's Gardner 35
Petty Sessions. Oke... 24
Pews. Heales 14
Pleading,
Common Law.
Chitty. Jun. ... 22
Greening 36
Williams 33
Equity. Drewry ... 22
Lewis ... 16
Guide. Anstey ... 37
Poor Law Orders ... 27
Poor Law Statutes ... 31
Precedents,
Conveyancing. Crabb 20
Rouse 12
Preliminary Examination Journal... ... 40
Priority. Fisher ... 9
Private Bills. May ... 6
Privy Council Practice.
Admiralty. Coote ... 10
Prize Law. Lushington 27
Probate,
Practice. Coote ... 8
Forms. Chadwick .. 26
Duties. Shelford ... 21
Provident Societies.
Brabrook 12
Public Health. Glen ... 31
Public Law (English).
Nasmith 9

PAGE

Questions
On Stephen's Comments. 31
Railways. Shelford ... 25
Compensation. Ingram 29
Carriers. Powell ... 34
Real Property.
Tudor 17
Chart. Fearne ... 37
Referees' Court Practice.
Clifford & Stephens ... 14
Registration. Davis ... 23
Religion. Church & State 38
Religious Confession.
Badeley 38
Ritual. Bayford ... 38
Bullock ... 38
Hamel 38
Phillimore ... 38
Roman Law.
Gaius 19
Ortolan 11
Tomkins 31
Tomkins and Jencken 18
Salmon Fisheries.
Law of. Bund ... 5
Savings Banks. Grant 4
Sciences (the) and Law 35
Sea Shore. Hunt ... 11
Servants. *Law of.* Baylis 10
Settlements,
Voluntary, &c. Cutler 35
Voluntary. Hunt ... 30
Sewers. Woolrych ... 22
Sheriff. Sewell 37
Sheriff's Court. Davis 5, 39
Short Hand. Gurney... 36
Solicitors' Bookkeeping.
Coombs 27
Specific Performance.
Fry 13
Stamp Laws. Dowell... 8
Standing Orders. May 6
Stock Exchange. Keyser 37
Succession Duty.
Shelford 21
Summary Convictions.
Oke 24
Suit in Equity. Hunter 11
Tenant, Landlord and.
Fawcett 9
Tithes. Schomberg ... 37
Torts. *Law of.* Underhill 6
Trades Unions. Brabrook 12
Treaties. Hertslet .. 28
Trusts, Charitable.
Tudor 18
Turnpike Laws. Oke 25
Vendors & Purchasers.
Seaborne 15
Water Companies Acts 30
Waters. Hunt 11
Wills. Coote 7
Crabb 20
Rouse 12
Tudor 17
Wigram .. . 33
Winding-up. Grant ... 4
Shelford 8
Window Lights. Latham 18
Wrongs. Underhill ... 6

Stephen's Blackstone's Commentaries.—Seventh Edition.

4 vols. 8vo., 4*l.* 4*s.* cloth.

MR. SERJEANT STEPHEN'S NEW COMMENTARIES ON THE LAWS OF ENGLAND, partly founded on Blackstone. The Seventh Edition, by JAMES STEPHEN, Esq., LL.D., Judge of County Courts, late Professor of English Law at King's College, London, and formerly Recorder of Poole.

EXTRACT FROM PREFACE TO THE PRESENT EDITION.

In publishing an Edition of this Work in the year 1868, although it was the first after the death of my father, I did not think it necessary to introduce it to the Public by any prefatory remarks, inasmuch as my own name had long been connected with the Commentaries during his lifetime, and also because, though the statutes and cases which had intervened since the previous Edition had rendered it necessary, throughout large portions of the Work, to alter almost every page, still there was no change in its general structure, nor any statute of such paramount importance as seemed to require any preliminary announcement.

On the present occasion the case is somewhat different. And, in the first place, with regard to the brackets. These I have been urged both by friends and strangers to discard altogether—it being suggested that the Public no longer care to distinguish the parts of the Work for which the two Authors are severally responsible. In this view, however, I find myself unable wholly to concur, as I believe that most Readers would prefer to know the authority for the passage they are studying; and in my opinion, moreover, no general acknowledgment at the outset is sufficient fairly to explain the kind of aid which must be afforded to any Writer on English Law by the materials he appropriates from Blackstone's Commentaries. At the same time I do myself think that there is no longer any reason minutely to point out every place in which a sentence or two is taken from Blackstone, or in which an inaccuracy or deficiency in his exposition of the Law has been corrected, or where passages from his work have been omitted altogether as being not applicable to the present times. I have considered it sufficient that the Reader should be apprised whether the statement of the law on any particular subject is given *substantially* on the authority of Blackstone or not, and it is on this principle that the brackets have now been arranged.

The position of the Work in reference to the Judicature Act, 1873, also seems to call for some remark, as the Profession will naturally wish to know whether the changes introduced by that important measure will be found embodied in the present Edition.

To this question I reply that the chief enactments of that Act will be found in these pages, and that I have explained their effect to the Student throughout the Work, to the best of my ability. Neither trouble nor expense have been spared to accomplish this object,—with what success I must leave the public to decide.

It may also deserve notice that it has been thought it would be an improvement to commence the last Volume with the subject of Crimes, so as to comprise the subject of the redress of Civil Injuries within the compass of a single volume. This has accordingly been done, and the space in the Fourth Volume thus gained has, I think, been usefully filled up by the addition of a Table of Statutes.

Grant's Bankers and Banking Companies.—Third Edit. By R. A. Fisher.

8vo., 28*s.* cloth.

GRANT'S TREATISE ON THE LAW RELATING TO BANKERS AND BANKING COMPANIES. Third Edition. With an Appendix of the Statutes. By R. A. FISHER, Esq., of the Middle Temple, Barrister at Law.

"Eight years sufficed to exhaust the second edition of this valuable and standard work, we need only now notice the improvements which have been made. We have once more looked through the work, and recognize in it the sterling merits which have acquired for it the high position which it holds in standard legal literature. Mr. Fisher has annotated all the recent cases."—*Law Times.*

"Prior to the publication of Mr. Grant's work on this subject, no treatise containing the required information existed; and, since its appearance, such important alterations respecting banks and bankers have been introduced, that the work needed in many parts entire reconstruction and arrangement. The last two editions have been entrusted to the care of the gentleman whose name is attached to the work. Mr. Fisher's name is in itself a guarantee that his duties of editor have been ably and conscientiously performed. In this respect we can assure those interested in the subject of this book, that they will in no respect be disappointed; obsolete and immaterial matter has been eliminated, and the present edition presents the existing law of bankers and banking companies as it at present exists."—*Justice of the Peace.*

"It is eight years since Mr. Fisher published the second edition of this practical book, and it now appears again re-edited by the same hand. Its steady sale shows that the public for whom it is written have recognized the kindness that was meant them, and makes a more elaborate recommendation superfluous. We must add, however, that the additions to the work, and the alterations in it which Mr. Fisher has made, are, as far as we can judge, real improvements, and that he has not failed to follow out the recent cases. The book used with care will no doubt be of great practical service to bankers and their legal advisers."—*Solicitors' Journal.*

Bund's Law of Salmon Fisheries.

Post 8vo., 15*s.* cloth.

The LAW relating to the SALMON FISHERIES of ENGLAND and WALES, as amended by the Salmon Fishery Act, 1873, with the Statutes and Cases. By J. W. WILLIS-BUND, M.A., LL.B., of Lincoln's Inn, Esquire, Barrister at Law, Vice Chairman Severn Fishery Board.

"Doubtless all the law will be found between his covers, and we have not been able to detect any erroneous statements. We can recommend the book as a disquisition,—it is conscientiously executed."—*Law Times.*

"Mr. Bund, whose name is so well known to all who take interest in our Salmon fisheries, has lost no time since the passing of the Act of 1873 in bringing out his work on salmon fishery law. That the book, so far as England and Wales are concerned, is a very complete and exhaustive one, no one who knows Mr. Bund's clearness and power of application will doubt. There is so much repealing, and interpolating and altering, that the process of disinterment of the law to an unskilled hand becomes desperately bewildering; but with Mr. Bund's work at his elbow, the inquirer will find it tolerably easy work, for Mr. Bund has with great skill and labour done all the most troublesome work for him, and each point of law is marked out so that there can be no difficulty in understanding it, for not only are the points unravelled and discussed, but the cases which have come before the superior courts upon the various points are distinctly set forth, and the decision upon each made plain. Mr. Bund has done the work excellently well, and nothing further in this way can be desired."—*The Field.*

"This terse and useful summary gives not merely the Salmon Fishery Act of 1873, but the state of the law as left repealed and unaffected by that act, with statutes and cases arising from them. The whole subject is treated exhaustively, and in a manner most satisfactory."—*Standard.*

"There is happily a good and ample index at the end of the volume. By means of this we have tested the author on various difficult points, and we have always found his opinion sound, and his explanations clear and lucid. This volume must of necessity become a hand-book to salmon-fishers in general, and especially to boards of conservators, who will thereby be much assisted in the formation of the new boards of conservators, under the Act of 1873; also the operation of the Acts of 1861 and 1865, as amended by the Act of 1873."—*Land and Water.*

"What he has done he has done fairly, and he has produced a work which will, we think, be found instructive to the beginner and a useful handy book for the practitioner in the local courts."—*Public Opinion.*

"We trust it will meet with the notice which the nature of the subject and the ability of the author deserve."—*Echo.*

Davis's Equity, Bankruptcy, &c. in the County Courts.

8vo. 18*s.* cloth.

The JURISDICTION and PRACTICE of the COUNTY COURTS in EQUITY, ADMIRALTY, PROBATE and ADMINISTRATION CASES, and in BANKRUPTCY. By J. E. DAVIS, of the Middle Temple, Esq., Barrister-at-Law.

*** *This work, although issued separately, forms a Supplementary or Second Volume to the Fourth Edition of Davis's County Courts Practice and Evidence in Actions.*

"This is the companion volume of Mr. Davis's Practice and Evidence in Actions in the County Courts, which, we are told, had a rapid sale. There is one conspicuous merit about all that Mr. Davis does—it is plain, straightforward and practical. Perhaps the most prominent feature of the work is the extensive introduction of sections of acts, rules and forms. No doubt this volume will have as great a success as its predecessor: it deserves as much."—*Law Times.*

"The excellent method of the author has not forsaken him, and the mass of heterogeneous topics which he has been compelled to deal with falls into very good practical order. The County Court judges will no doubt make this book their trusty companion."—*Solicitors' Journal.*

"We think Mr. Davis will achieve as great a success with the second as he undoubtedly has with the first volume of his work on the County Courts."—*Law Journal.*

Underhill's Mines Drainage Act, 1873.

Post 8vo., 5*s.* cloth.

A POPULAR SUMMARY of the SOUTH STAFFORDSHIRE MINES DRAINAGE ACT, 1873, and of the Acts incorporated therewith, with Forms and an Appendix containing the Act itself. By ARTHUR UNDERHILL, B.A., F.G.S., of Lincoln's Inn, Barrister at Law.

Underhill's Law of Torts or Wrongs.

Post 8vo., 6*s.* cloth.

A SUMMARY OF THE LAW OF TORTS OR WRONGS INDEPENDENT OF CONTRACT, for the use of Students and Practitioners. By ARTHUR UNDERHILL, B.A., of Lincoln's Inn, Esq., Barrister at Law.

"Mr. Underhill states that his chief aim has been to write for the student, but many who have passed their pupilage and are now enjoying the advantages of considerable practice, may consult these pages with advantage. Mr. Underhill places before his readers broad principles or rules of law, which he illustrates by cases falling under them, so that they are placed before the mind in a manner most impressive. Exceptions are not omitted, and the rules are, when necessary, elucidated by sub-rules. The plan is a good one, and has been honestly carried out, and a good index facilitates reference."—*Justice of the Peace.*

"Mr. Underhill's ability in making a clear digest of the subject treated of in this volume is conspicuous. Many works would have to be consulted for the information here concisely given, so that practitioners as well as students will find it useful."—*News of the World.*

"Mr. Underhill, in his work, gives us an example of how clearly and concisely so difficult and intricate a branch of Law as that of Torts can be set out. He has compressed into a small work a vast amount of information, and his book is so clearly written that it is easily comprehensible. To the Law Student, for whom it is more particularly written, it may be recommended both for its simplicity and accuracy."—*Morning Advertiser.*

"We strongly recommend the manual to students of both branches of the profession."—*Preliminary Examination Journal.*

"A work which will, we think, be found instructive to the beginner, and a useful handy-book for the practitioner in Local Courts."—*Public Opinion.*

"He has set forth the elements of the law with clearness and accuracy. The little work of Mr. Underhill is inexpensive, and may be generally relied on."—*Law Times.*

"A handybook of the law affecting wrongs independent of contract."—*The Echo.*

"Mr. Underhill has here supplied a want long felt in legal treatises, and has entirely, by the present excellent volume, superseded the antiquated work of Mr. Addison, which was totally unfit for practical purposes."—*Standard.*

"This is a very useful little book on the law of Torts. The book is intended for the student who desires to have principles before entering into particulars, and we know no book on the subject so well adapted for the purpose."—*Law Examination Reporter.*

Sir T. Erskine May's Parliamentary Practice.—7th Edit.

One very thick volume 8vo. 40*s.* cloth.

A TREATISE on the LAW, PRIVILEGES, PROCEEDINGS and USAGE of PARLIAMENT. By Sir THOMAS ERSKINE MAY, K.C.B., Clerk of the House of Commons; Bencher of the Middle Temple. Seventh Edition, Revised and Enlarged.

CONTENTS:—Book I. Constitution, Powers and Privileges of Parliament.—Book II. Practice and Proceedings in Parliament.—Book III. The Manner of Passing Private Bills, with the Standing Orders in both Houses, and the most recent Precedents.

"A work, which has risen from the position of a text book into that of an authority, would seem to a considerable extent to have passed out of the range of criticism. It is quite unnecessary to point out the excellent arrangement, accuracy and completeness which long ago rendered Sir T. E. May's treatise the standard work on the law of Parliament. Not only are points of Parliamentary law discussed or decided since the publication of the last edition duly noticed in their places, but the matter thus added is well digested, tersely presented and carefully interwoven with the text."—*Solicitors' Journal.*

"Fifty pages of new matter have been added by Sir Thomas May in his seventh edition, thus comprising every alteration in the law and practice of Parliament, and all material precedents relating to public and private business since the publication of the sixth edition. We need make no comment upon the value of the work. It is an accepted authority and is undeniably the law of Parliament. It has been brought up to the latest date, and should be in the hands of every one engaged in Parliamentary life, whether as a lawyer or as a senator."—*Law Times.*

Kelly's Conveyancing Draftsman.

Post 8vo., 6*s.* cloth.

THE DRAFTSMAN: containing a Collection of Concise Precedents and Forms in Conveyancing; with Introductory Observations and Practical Notes. By JAMES HENRY KELLY.

"This is a thoroughly practical book, designed for the solicitor and the student. Mr. Kelly has rightly conceived the duties of a conveyancer; and his short introductory recommendations should be attentively considered by all who are anxious to become safe draftsmen. The author gives a few forms under each heading, confining himself to such as are likely to be of everyday use in the office. This volume ought to be popular, as it combines law and practice."—*Law Times.*

"Mr. Kelly's object is to give a few precedents of each of those instruments which are most commonly required in a solicitor's office, and for which precedents are not always to be met with in the ordinary books on conveyancing. The idea is a good one, and the precedents contained in the book are, generally speaking, of the character contemplated by the author's design. We have been favourably impressed with a perusal of several of the precedents in this book; and practitioners who have already adopted forms of their own will probably find it advantageous to collate them with those given by Mr. Kelly. Each set of precedents is prefaced by a few terse and practical observations."—*Solicitors' Journal*

"Such statements of law and facts as are contained in the work are accurate."—*Law Journal.*

"It contains matter not found in the more ambitious works on conveyancing, and we venture to think that the student will find it a useful supplement to his reading on the subject of conveyancing."—*Law Examination Journal.*

LAW EXAMINATION JOURNAL
AND LAW STUDENT'S MAGAZINE.

Edited by HERBERT NEWMAN MOZLEY, Esq., Barrister at Law.

Published on the morning of the second day after each respective Final Examination in Hilary, Easter, Trinity and Michaelmas Terms in each year. Each Number price 1*s.*, *by post* 1*s.* 1*d.*; *or annual subscription, payable in advance,* 4*s.*, *by post* 4*s.* 4*d.*

CONTENTS.

No. **17.** Michaelmas, 1873.—I. Leading Cases (Note by the Editor).—II. Statutes of 1873 (First Notice).—III. Digest of Cases.—IV. Intermediate Examination, Trinity Term, 1873: Questions and Answers.—V. Final Examination, Michaelmas Term, 1873: Questions and Answers.—VI. Notice of Intermediate Examination for 1874.—VII. Reviews of Books.—VIII. Law Student's Societies.—IX. Correspondence.

No. **16.** Trinity, 1873.—I The Study of the Law, concluded. II. Leading Cases—Spencer's Case, continued. III. Digest of Cases. IV. Intermediate Examination, Easter, 1873: Questions and Answers. V. Final Examination, Trinity, 1873: Questions and Answers. VI. A Review—Kelly's Draftsman. VII. Correspondence and Notices.

No. **15.** Easter, 1873.—I. The Study of the Law, continued. II. Analysis of Leading Cases. III. Digest of Cases. IV. Intermediate Examination, Hilary Term, 1873: Questions and Answers. V Final Examination, Easter Term, 1873: Questions and Answers. VI. Correspondence and Notices.

No. **14.** Hilary, 1873.—I The Study of the Law, continued. II. Digest of Cases. III. Intermediate Examination, Michaelmas Term, 1872: Questions and Answers. IV. Final Examination, Hilary Term, 1873: Questions and Answers. V. Reviews. VI. Answers to Correspondents and Notices.

No. **13.** Michaelmas, 1872.—I. Public Prosecutors, concluded. II. The Statutes of 1872. III. Digest of Cases. IV. Intermediate Examination, Trinity Term, 1872: Questions and Answers. V. Final Examination, Michaelmas Term, 1872: Questions and Answers. VI. Reviews. VII. Answers to Correspondents and Notices.

No. **12.** Trinity, 1872.—I. Public Prosecutors, continued. II. Study of the Law, continued. III. Digest of Cases. IV. Intermediate Examination, Easter Term, 1872: Questions and Answers. V. Final Examination, Trinity Term, 1872: Questions and Answers. VI. Law Students' Congress, Birmingham: Law Examinations. VII. Review. VIII. Answers to Correspondents.

No. **11.** Easter, 1872.—I. The Study of the Law. II. Legislative Prospects of the Session. Married Women's Property Act Amendment Bill. Imperial Court of Appeal. III. Digest of Cases IV. Intermediate Examination Questions and Answers. Hilary Term, 1872. V. Final Examination Questions and Answers. Easter Term, 1872. VI. Answers to Correspondents.

No. **10.** Hilary, 1872.—I. Notice of the late Editor. II. The Study of the Law. III. Digest of Cases. IV. Intermediate Examination Questions and Answers. V. Final Examination Questions and Answers. VI. Answers to Correspondents.

No. **9.** Michaelmas, 1871.—I. On Examinations. II. The Subject of Public Prosecutors (continued). III. Digest of Cases. IV. Intermediate Examination Questions on Chitty, Williams and Smith, Trinity, 1871, with Answers. V. Final Examination Questions and Answers, Michaelmas Term, 1871. VI. Reviews of Books. VII. Answers to Correspondents.

No. **8.** Trinity, 1871.—I. On the Necessity of providing a Public Prosecutor: By the Editor. II. How Mr. Mansfield Denman passed his "Final:" By E. H. III. Digest of Cases: Note by the Editor. IV. Intermediate Examination Questions and Answers (Easter, 1871). V. Final Examination Questions and Answers (Trinity, 1871). VI. Correspondence, &c.

No **7.** Easter, 1871.—I. Some Remarks on the Married Women's Property Act, 1870: By the Editor. II. Digest of important Legal Decisions. III. Intermediate Examination Questions and Answers (Hilary, 1871). IV. Final Examination Questions and Answers (Easter, 1871). V. Reviews of New Books. VI Correspondence.

No. **6.** Hilary, 1871.—I. Our Jury System: By the Editor. II. Digest of important Legal Decisions. III. Intermediate Examination Questions and Answers (Michaelmas, 1870). IV. Final Examination Questions and Answers (Hilary, 1871). V. Reviews of New Books. VI. Correspondence.

No. **5.** Michaelmas, 1870.—I. On the Legislation of 1870: By the Editor. II. Digest of important Legal Decisions. III. Intermediate Examination Questions and Answers (Trinity, 1870). IV. Final Examination Questions and Answers (Michaelmas, 1870). V. Reviews of New Books. VI. Correspondence.

No. **4.** Trinity, 1870.—I. Leading Article on the Fusion of the Two Branches of the Legal Profession: By the Editor (concluded). II. Digest of important Legal Decisions. III. Intermediate Examination Questions and Answers (Easter, 1870). IV. Final Examination Questions and Answers (Trinity, 1870). V. Reviews of New Books. VI. Correspondence.

No. **3.** Easter, 1870.—I. On the Fusion of the Two Branches of the Profession: By the Editor. II. Digest of important recent Decisions. III. Intermediate Examination Questions and Answers (H. T. 1870). IV. Final Examination Questions and Answers (E. T. 1870). V. Reviews of New Books. VI. Correspondence.

No. **2.** Hilary, 1870.—I. Note by the Editor. II. On Attornment in Mortgages. III. Digest of important recent Decisions. IV. Intermediate Examination Questions and Answers (M. T. 1869). V. Final Examination Questions and Answers (H. T. 1870). VI. Correspondence.

No. **1.** Michaelmas, 1869.—I. County Courts, their Merits and Defects as Local Tribunals: By the Editor. II. Summary of new Decisions in Banco and at Nisi Prius. III. Analysis of the more important practical Statutes of 32 & 33 Vict. IV. Intermediate Examination Questions and Answers (T. T. 1869). V. Final Examination Questions and Answers (M. T. 1869). VI. Notes on the Examinations. VII. Correspondence.

*** *Copies of Vol. I. of the* LAW EXAMINATION JOURNAL, *containing Nos.* 1 *to* 14, *with full Indexes and Tables of Cases Cited, may now be had, price* 16*s.*, *bound in cloth.*

Dowell's Income Tax Laws.

8vo., cloth.

THE INCOME TAX LAWS at present in force in the United Kingdom, with Practical Notes, Appendices and a copious Index. By STEPHEN DOWELL, M.A., of Lincoln's Inn, Assistant Solicitor of Inland Revenue.

Dowell's Stamp Laws.

8vo., 12*s.* 6*d.* cloth.

A HISTORY and EXPLANATION of the STAMP DUTIES, containing Remarks on the Origin of Stamp Duties, a History of the Duties in this Country from their commencement to the present time, Observations on the past and the present State of the Stamp Laws, an Explanation of the System and the Administration of the Tax, Observations on the Stamp Duties in Foreign Countries and the Stamp Laws at present in force in the United Kingdom; with Notes, Appendices and a copious Index. By STEPHEN DOWELL, M.A., of Lincoln's Inn, Assistant Solicitor of Inland Revenue.

Coote's Probate Court Practice.—Sixth Edition.

8vo., 25*s.* cloth.

THE PRACTICE of the COURT of PROBATE in COMMON FORM BUSINESS. By HENRY CHARLES COOTE, F.S.A., Proctor in Doctors' Commons, &c. Also a Treatise on the Practice of the Court in Contentious Business. By THOMAS H. TRISTRAM, D.C.L., Advocate in Doctors' Commons, and of the Inner Temple. Sixth Edition, with great Additions, and including all the Statutes, Rules, Orders, &c., to the present Time; together with a Collection of Original Forms and Bills of Costs.

Shelford's Companies.—2nd Edit. by Pitcairn and Latham.

8vo., 21*s.* cloth.

SHELFORD'S LAW OF JOINT STOCK COMPANIES; containing a Digest of the Case Law on that subject; the Companies Acts, 1862, 1867, and other Acts relating to Joint Stock Companies; the Orders made under those Acts to regulate Proceedings in the Court of Chancery and County Courts, and Notes of all Cases interpreting the above Acts and Orders. Second Edition, much enlarged, and bringing the Statutes and Cases down to the date of publication. By DAVID PITCAIRN, M.A., Fellow of Magdalen College, Oxford, and of Lincoln's Inn, Barrister-at-Law; and FRANCIS LAW LATHAM, B.A., Oxon, of the Inner Temple, Barrister-at-Law, author of "A Treatise on the Law of Window Lights."

"We may at once state that, in our opinion, the merits of the work are very great, and we confidently expect that it will be at least for the present the standard manual of joint stock company law. That great learning and research have been expended by Mr. Pitcairn no one can doubt who reads only a few pages of the book; the result of each case which has any bearing upon the subject under discussion is very lucidly and accurately stated. We heartily congratulate him on the appearance of this work, for which we anticipate a great success. There is hardly any portion of the law at the present day so important as that which relates to joint stock companies, and that this work will be the standard authority on the subject we have not the shadow of a doubt."—*Law Journal.*

"After a careful examination of this work we are bound to say that we know of no other which surpasses it in two all-important attributes of a law book: first, a clear conception on the part of the author of what he intends to do and how he intends to treat his subject; and secondly, a consistent, laborious and intelligent adherence to his proposed order and method. All decisions are noted and epitomised in their proper places, the practice-decisions in the notes to Acts and Rules, and the remainder in the introductory account or digest. In the digest Mr. Pitcairn goes into everything with original research, and nothing seems to escape him. It is enough for us that Mr. Pitcairn's performance is able and exhaustive. Nothing is omitted, and everything is noted at the proper places. In conclusion we have great pleasure in recommending this edition to the practitioner. Whoever possesses it, and keeps it noted up, will be armed on all parts and points of the law of joint stock companies."—*Solicitors' Journal.*

"Although nominally a second edition of Mr. Shelford's treatise, it is in reality an original work, the form and arrangement adopted by Mr. Shelford have been changed and, we think, improved by Mr. Pitcairn. A full and accurate index also adds to the value of the work, the merits of which we can have no doubt, will be fully recognized by the profession."—*Law Magazine.*

"This book has always been the *vade mecum* on company law, and will, apparently, long continue to occupy that position. It is perhaps even more useful to the legal practitioner than to the man of business, but still it is the best source of information to which the latter can go."—*Financier and Money Market Review.*

Nasmith's Institutes of English Public Law.

Post 8vo., 12*s.* cloth.

THE INSTITUTES of ENGLISH PUBLIC LAW, embracing an Outline of General Jurisprudence, the Development of the British Constitution, Public International Law, and the Public Municipal Law of England. By DAVID NASMITH, Esq., LL.B., of the Middle Temple, Barrister at Law, Author of "The Chronometrical Chart of the History of England," &c.; Joint Translator of Ortolan's "History of Roman Law."

"We believe the plan of the book is the right one, that, in dealing clearly with general jurisprudence, constitutional law, and the relation which this sovereign state bears to other sovereign states, before going to municipal law, he has taken the best course for the student of law, and that therefore in this important respect his plan is superior to that pursued in the Institutes of Justinian, or by Blackstone and his followers. We have only to add that we know of no book which, in our opinion, might more fitly, or perhaps so fitly, be placed in the hands of a beginner in the study of law."—*Law Magazine.*

"Mr. Nasmith has, we think, produced a very useful compendium of the leading divisions of the law, and has with care and industry collected the pith of the best writers under each head. We think we are right in saying that Mr. Nasmith's is the best and most useful of the little books which have recently appeared as professed outlines of English law."—*Justice of the Peace.*

"Mr. Nasmith's book is likely to attract the attention it deserves. It is the careful compilation of an accomplished scholar, and of a perfect master of his work. He is original as well as scholarly, and displays all the learning of Heidelburg with the versatility peculiar to a Celtic nativity."—*Morning Post.*

"The object of this book, as fully stated in the preface, is to explain the relative positions of the individual and the state in the English system of jurisprudence. It is not an account of the whole body of the law, but only of that portion of it which regulates the duties of state functionaries and bodies, and the duties of citizens to the state The analysis is carefully executed, both in arrangement and in detail, and there is a tabular analysis exhibiting in a very clear manner the branching out of the different topics, which must be highly useful to students."—*Economist.*

Fawcett's Law of Landlord and Tenant.

8vo., 14*s.* cloth.

A COMPENDIUM of the LAW of LANDLORD and TENANT. By WILLIAM MITCHELL FAWCETT, of Lincoln's Inn, Esq., Barrister-at-Law.

"This new compendium of the law on a wide and complicated subject, upon which information is constantly required by a vast number of persons, it sure to be in request. It never wanders from the point, and being intended not for students of the law, but for lessors and lessees and their immediate advisers, wisely avoids historical disquisitions, and uses language as untechnical as the subject admits. It may safely be assumed to contain information on all the ordinary questions which either contracting party may require to be answered."—*Law Journal.*

"The author has succeeded in compressing the whole of his subject within the reasonable compass of 373 pages. It may roughly be said of Mr. Fawcett's work, that it is statutory throughout, in accordance with the predominant character of the law at the present day; and Mr. Fawcett takes advantage of this characteristic of modern law to impart to his compendium a degree of *authenticity* which greatly enhances its value as a convenient medium of reference, for he has stated the law in the very words of the authorities. We have discovered plain utility to be the aim and end of Mr. Fawcett's treatise, and an ambitious merit to be that of Mr. Smith and Mr Soden's. Probably we should be justified in saying that Mr. Fawcett has more nearly reached his aim, lower as it is, than Mr. Smith and Mr. Soden."—*Law Magazine.*

"The amount of information compressed into the book is very large. The plan of the book is extremely good, and the arrangement adopted has enabled the author to put together in one place the whole law on any particular branch of the subject, and to avoid repetitions. Thus not only is it easy to find what the author has to say on any particular point, but when we have found a reference to it in one place, we may be satisfied that we have found all the book contains upon the point. In this respect, though probably from its smaller size it must contain less information than Woodfall, it will be found far more convenient for ordinary use than that treatise. We find far more repetitions in Mr. Cave's than in Mr. Fawcett's work, and more cases in which the whole law on any point has to be looked for, not in one place but in several; in this respect, therefore, Mr. Fawcett's book has an advantage. We may add that Mr. Fawcett's references are usually given to two sets of reports, while Mr. Cave's are to one only."—*Solicitors' Journal.*

"Woodfall was, and perhaps is, the great authority on this subject. But his book is bulky, much of it is obsolete, and much useless, and the legislature and the judges have made many changes which sufficiently justify Mr. Fawcett in his undertaking of a new treatise on a subject of such wide-spread interest. His aim, however, is condensation. He contents himself with a plain statement of the existing law, prudently omitting all matters of merely historical interest and topics collateral to the special subjects; he has deemed it unnecessary to treat of the details of judicial procedure or to enact a mass of precedents of leases which are already possessed by the profession in other works. Above all, it has been his purpose to state the law in the language of the authorities, presenting the principles enunciated in the very words of the judges. Another excellent feature is a concise summary of the effect of each enactment in the marginal notes. It will be seen from this that the book is thoroughly practical, and, as such, will doubtless find a favorable reception from the profession."—*Law Times.*

Fisher's General Law of Mortgage.—Second Edition.

Two vols. royal 8vo., 55*s.* cloth.

THE LAW of MORTGAGE, and other Securities upon Property. By WILLIAM RICHARD FISHER, of Lincoln's Inn, Esq., Barrister at Law. Second Edition, very considerably enlarged.

Baylis's Law of Domestic Servants.—By Monckton.

Foolscap 8vo., 2*s.* cloth.

THE RIGHTS, DUTIES and RELATIONS of DOMESTIC SERVANTS and their MASTERS AND MISTRESSES. With a short Account of the Servants' Institutions, &c. and their advantages. By T. HENRY BAYLIS, M.A., of Brasenose College, Oxford, Barrister at Law of the Inner Temple. Fourth Edition, with considerable Additions, by EDWARD P. MONCKTON, Esq., B.A., of Trinity College, Cambridge, Barrister at Law of the Inner Temple.

"Mr. Monckton has edited a fourth edition of Mr. Baylis's little work on the Rights, Duties and Relations of Domestic Servants and their Masters and Mistresses. It has evidently found great favour with the public, and is an excellent manual of the subject of which it treats."—*Law Times.*

"This little work thoroughly deserves the success it has gained. It contains in a small compass the law on the important subject to which it relates, and, a somewhat unusual feature in a law book, it also affords much sensible advice, not of a strictly legal kind, both to servants and their employers. There are few solicitors who have not from time to time to advise employers on their difficulties with their domestic servants. This volume will be found a convenient handbook to the leading authorities on the subject."—*Solicitors' Journal.*

Coote's Admiralty Practice.—Second Edition.

8vo., 16*s.* cloth.

THE PRACTICE of the HIGH COURT of ADMIRALTY of ENGLAND: also the Practice of the Judicial Committee of Her Majesty's Most Honorable Privy Council in Admiralty Appeals, with Forms and Bills of Costs. By HENRY CHARLES COOTE, F.S.A., one of the Examiners of the High Court of Admiralty, Author of "The Practice of the Court of Probate," &c. Second Edition, almost entirely re-written, with a Supplement giving the *County Courts Jurisdiction and Practice in Admiralty*, the Act of 1868, Rules, Orders, &c.

THE SUPPLEMENT *containing the* COUNTY COURT PRACTICE IN ADMIRALTY *is complete in itself and may be had separately, 2s. sewed.*

*** *This work contains every Common Form in use by the Practitioner in Admiralty, as well as every description of Bill of Costs in that Court, a feature possessed by no other work on the Practice in Admiralty.*

"Mr. Coote, being an Examiner of the Court, may be considered as an authoritative exponent of the points of which he treats. His treatise is, substantially considered, everything that can be desired to the practitioner."—*Law Magazine.*

"The book before us is a second and enlarged edition of a work on the Practice of the Admiralty Court, written by the author some ten years ago. It is, however, a great improvement on its predecessor, being much fuller and more systematically arranged, and containing greater facilities for reference. The first part of the book is a treatise on the practice of the Court, which appears to us to be very carefully done, and to go thoroughly into the subject. The second part is a similar treatise on the practice of the Judicial Committee of the Privy Council in Admiralty matters, written on the same system as the former part. The appendix contains a large number of common forms and precedents of pleadings used in the Court of Admiralty, together with bills of costs. Altogether Mr. Coote has done his work very carefully and completely, and we think his labours will be duly appreciated by Admiralty practitioners."—*Solicitors' Journal.*

"The first edition of this excellent work was produced for the purpose of illustrating the practice of the High Court of Admiralty, just then subordinated to the 'Rules of 1859' drawn up by the late distinguished judge. Since then several important changes have been carried out, both in the matter of an extended jurisdiction and of practice. These changes it has been Mr. Coote's object to incorporate in the present edition of his work. In addition he has increased the utility of his book by a chapter on the practice of the Judicial Committee of the Privy Council in Admiralty Appeals, and by a copious set of Admiralty precedents, in which it is the author's hope and belief that no necessary common form has been omitted. The present edition appears very seasonably."—*Shipping and Mercantile Gazette.*

"Mr. Coote has the great advantage of experience; he has long been a practitioner in the court as a proctor; he is consequently familiar with those minutiæ of practice which mark the distinction between the student and the practical man.

"Mr. Coote is a successful writer upon the Practice of the Probate and the Admiralty Courts. His book on the former has reached a fifth edition, and the volume before us is a second edition."—*Law Times.*

Wills on Circumstantial Evidence.—Fourth Edition.

8vo., 10*s.* cloth.

AN ESSAY on the PRINCIPLES of CIRCUMSTANTIAL EVIDENCE. Illustrated by numerous Cases. By the late WILLIAM WILLS, Esq. Fourth Edition, edited by his Son, ALFRED WILLS, Esq., Barrister at Law.

Hunt's Boundaries, Fences and Foreshores.—2nd Edit.

Post 8vo., 12*s.* cloth.

A TREATISE on the LAW relating to BOUNDARIES and FENCES and to the Rights of Property on the Sea Shore and in the Beds of Public Rivers and other Waters. Second Edition. By ARTHUR JOSEPH HUNT, Esq., of the Inner Temple, Barrister at Law.

"It speaks well for this book that it has so soon passed into a second edition. That its utility has been appreciated is shown by its success. Mr. Hunt has availed himself of the opportunity of a second edition to note up all the cases to this time, and to extend considerably some of the chapters, especially that which treats of rights of property on the sea shore and the subjects of sea walls and commissions of sewers."—*Law Times.*

"There are few more fertile sources of litigation than those dealt with in Mr. Hunt's valuable book. It is sufficient here to say that the volume ought to have a larger circulation than ordinarily belongs to law books, that it ought to be found in every country gentleman's library, that the cases are brought down to the latest date, and that it is carefully prepared, clearly written, and well edited."—*Law Magazine.*

"Mr. Hunt chose a good subject for a separate treatise on Boundaries and Fences and Rights to the Seashore, and we are not surprised to find that a second edition of his book has been called for. The present edition contains much new matter. The chapter especially which treats on rights of property on the seashore, has been greatly extended. Additions have been also made to the chapters relating to the fencing of the property of mine owners and railway companies. All the cases which have been decided since the work first appeared have been introduced in their proper places. Thus it will be seen this new edition has a considerably enhanced value."—*Solicitors' Journal.*

Ortolan's Roman Law, translated by Prichard & Nasmith.

8vo., 28*s.* cloth.

THE HISTORY of ROMAN LAW, from the Text of Ortolan's Histoire de la Législation Romaine et Généralisation du Droit (Edition of 1870). Translated, with the Author's permission, and Supplemented by a Chronometrical Chart of Roman History. By ILTUDUS T. PRICHARD, Esq., F.S.S., and DAVID NASMITH, LL.B., Barristers at Law.

"We know of no work, which, in our opinion, exhibits so perfect a model of what a text-book ought to be. Of the translation before us, it is enough to say, that it is a faithful representation of the original."—*Law Magazine.*

"This translation, from its great merit, deserves a warm reception from all who desire to be acquainted with the history and elements of Roman law, or have its interests as a necessary part of sound legal education at heart. With regard to that great work it is enough to say, that English writers have been continually in the habit of doing piecemeal what Messrs. Prichard and Nasmith have done wholesale. Hitherto we have had but gold-dust from the mine; now we are fortunate in obtaining a nugget. Mr. Nasmith is already known as the designer of a chart of the history of England, which has been generally approved, and bids fairly for extensive adoption."—*Law Journal.*

"We are extremely glad to welcome the appearance of a translation of any of the works of M. Ortolan, and the history and generalization of Roman law, which are now presented to us in English, are perhaps the most useful books that could be offered at the present time to students of the Roman law. The utility of Roman law, as an instrument of legal education, is now generally admitted. The English of the book is unusually free from foreign idioms which so often disfigure translations. The book itself we strongly recommend to all who are interested in Roman law, jurisprudence or history, and who are not sufficiently familiar with French, to be able to read the original with ease."—*Solicitors' Journal.*

Hunter's Suit in Equity.—Sixth Edition.

Post 8vo., 12*s.* cloth.

AN ELEMENTARY VIEW of the PROCEEDINGS in a SUIT in EQUITY. With an Appendix of Forms. By SYLVESTER J. HUNTER, B.A., of Lincoln's Inn, Barrister at Law. Sixth Edition. By G. W. LAWRANCE, M.A., of Lincoln's Inn, Barrister at Law.

"This book is so very well known, and has proved so extremely useful to law students and practitioners, that we should only repeat what is familiar if we said anything in its praise. Edition after edition has been issued as changes in the law have necessitated it, and Mr. Lawrence now sends the work forth annotated with all recent cases requiring notice to illustrate the text."—*Law Times.*

"There can be no better test of the value of this book than the fact that the sixth edition is now before the public. The first was published in 1858, so that it has enjoyed the good fortune falling to very few legal works of passing through six editions in fifteen years. The fault which is almost inevitable as a book advances in editions, of quoting too many decisions, has been successfully avoided, so that a student will find this edition as suitable to his wants as was the first edition."—*Law Magazine.*

"What greater testimony to the value of a book can we put forward than the bare fact that in fifteen years it has run through six editions, and that only two years and some few months have elapsed between the publications of the last two editions? 'Hunter's Suit in Equity' is a work that every student for the Chancery bar must read, and its popularity is therefore readily explained. The new edition contains such alterations in the text as have been rendered necessary by the Court of Chancery Funds Act, 1872, and the rules and orders thereunder. The editor further states that the whole work has been carefully revised, proper attention being paid to the decisions of the court since the appearance of the fifth edition."—*Law Journal.*

"We have so often noticed previous editions of this useful work that it appears to be only necessary to say of this edition that many recent decisions have been noted, and the text has been adapted to the alterations in practice and procedure introduced by the Court of Chancery Funds Act, 1872."—*Solicitors' Journal.*

Brabrook's Co-operative and Provident Societies.

12mo., 6*s.* cloth.

THE LAW relating to INDUSTRIAL and PROVIDENT SOCIETIES, including the Winding-up Clauses, with a Practical Introduction, Notes, and Model Rules, to which are added the Law of France on the same subject, and Remarks on Trades Unions. By EDWARD W. BRABROOK, F.S.A., of Lincoln's Inn, Esq., Barrister at Law, Assistant Registrar of Friendly Societies in England.

"It may be usefully consulted by practitioners desirous of learning something more upon the subject than is to be found in works on partnership and joint stock companies. The book is thoughtfully written, and we recommend it to those who desire to learn something practical about the work which these societies are meant to do and the way in which it is to be done."—*Solicitors' Journal.*

"Mr. Brabrook's little work on these societies is opportune, and the statistics and information contained in it are valuable and interesting. There is a chapter devoted to practical advice, in which are contained many valuable and important hints."—*Law Magazine.*

"Mr. Brabrook brings not merely official knowledge of his legal position as the barrister recently appointed to assist Mr. Tidd Pratt, Registrar of Friendly Societies in England, but the devotion of many years to a practical study of our industrial and provident institutions."—*Post*

"The author speaks with practical experience and authority."—*Observer.*

"The clear exposition made by Mr. Brabrook in this volume supplies all the requisite information, and persons interested in the subject will do well to consult its pages."—*News of the World.*

Rouse's Conveyancer.—3rd Edit. with Supplement.

Two vols. 8vo., 30*s.* cloth.

The PRACTICAL CONVEYANCER, giving, in a mode combining facility of reference with general utility, upwards of Four Hundred Precedents of Conveyances, Mortgages and Leases, Settlements, and Miscellaneous Forms, with (not in previous editions) the Law and numerous Outline Forms and Clauses of WILLS and Abstracts of Statutes affecting Real Property, Conveyancing Memoranda, &c. By ROLLA ROUSE, Esq., of the Middle Temple, Barrister at Law, Author of "The Practical Man," &c. Third Edition, greatly enlarged. With a Supplement, giving Abstracts of the Statutory Provisions affecting the Practice in Conveyancing; and the requisite Alterations in Forms, with some new Forms; and including a full Abstract in numbered Clauses of the Stamp Act, 1870.

THE SUPPLEMENT *separately, price* 1*s.* 6*d. sewed.*

"The best test of the value of a book written professedly for practical men is the practical one of the number of editions through which it passes. The fact that this well-known work has now reached its third shows that it is considered by those for whose convenience it was written to fulfil its purpose well."—*Law Magazine.*

"This is the third edition in ten years, a proof that practitioners have used and approved the precedents collected by Mr. Rouse. In this edition, which is greatly enlarged, he has for the first time introduced Precedents of Wills, extending to no less than 116 pages. We can accord unmingled praise to the conveyancing memoranda showing the practical effect of the various statutory provisions in the different parts of a deed. If the two preceding editions have been so well received, the welcome given to this one by the profession will be heartier still."—*Law Times.*

"So far as a careful perusal of Mr. Rouse's book enables us to judge of its merits, we think that as a collection of precedents of general utility in cases of common occurrence it will be found satisfactorily to stand the application of the test. The draftsman will find in the Practical Conveyancer precedents appropriate to all instruments of common occurrence, and the collection appears to be especially well supplied with those which relate to copyhold estates. In order to avoid useless repetition and also to make the precedents as simple as possible, Mr. Rouse has sketched out a number of outline drafts so as to present to the reader a sort of bird's eye view of each instrument and show him its form at a glance. Each paragraph in these outline forms refers, by distinguishing letters and numbers, to the clauses in full required to be inserted in the respective parts of the instrument, and which are given in a subsequent part of the work, and thus every precedent in outline is made of itself an index to the clauses which are necessary to complete the draft. In order still further to simplify the arrangement of the work, the author has adopted a plan (which seems to us fully to answer its purpose) of giving the variations which may occur in any instrument according to the natural order of its different parts."—*Law Journal.*

"That the work has found favor is proved by the fact of our now having to review a third edition. This method of skeleton precedents appears to us to be attended with important advantages. To clerks and other young hands a course of conveyancing under Mr. Rouse's auspices is, we think, calculated to prove very instructive. To the solicitor, especially the country practitioner, who has often to set his clerks to work upon drafts of no particular difficulty to the experienced practitioner, but upon which they the said clerks are not to be quite trusted alone, we think to such gentlemen Mr. Rouse's collection of Precedents is calculated to prove extremely serviceable. We repeat, in conclusion, that solicitors, especially those practising in the country, will find this a useful work."—*Solicitors' Journal.*

Dixon's Law of Partnership.

1 vol. 8vo., 22*s.* cloth.

A TREATISE on the LAW of PARTNERSHIP. By JOSEPH DIXON, of Lincoln's Inn, Esq., Barrister at Law. Editor of "Lush's Common Law Practice."

"It is with considerable gratification that we find the subject treated by a writer of Mr. Dixon's reputation for learning, accuracy and painstaking. Mr. Lindley's view of the subject is that of a philosophical lawyer, Mr. Dixon's is purely and exclusively practical from beginning to end. We imagine that very few questions are likely to come before the practitioner which Mr. Dixon's book will not be found to solve. Having already passed our opinion on the way in which the work is carried out, we have only to add that the value of the book is very materially increased by an excellent marginal summary, and a very copious index."—*Law Magazine and Review.*

"Mr. Dixon has done his work well. The book is carefully and usefully prepared."—*Solicitors' Journal.*

"Mr. Dixon enters into all the conditions of partnerships at common law, and defines the rights of partners among themselves; the rights of the partnership against third persons; the rights of third persons against the partnership; and the rights and liabilities of individuals, not actually partners, but liable to be treated by third persons as partners."—*The Times.*

"We heartily recommend to practitioners and students Mr. Dixon's treatise as the best exposition of the law we have read, for the arrangement is not only artistic, but conciseness has been studied without sacrifice of clearness. He sets forth the principles upon which the law is based as well as the cases by which its application is shown. Hence it is something more than a digest, which too many law books are not: it is really an essay."—*Law Times.*

"He has evidently bestowed upon this book the same conscientious labour and painstaking industry for which we had to compliment him some months since when reviewing his edition of Lush's 'Practice of the Superior Courts of Law,' and, as a result, he has produced a clearly written and well arranged manual upon one of the most important branches of our mercantile law."—*Law Journal.*

"The matter is well arranged and the work is carefully executed."—*Athenæum.*

Mr. Justice Lush's Common Law Practice.—Third Edition by Dixon.

2 vols. 8vo., 46*s.* cloth.

LUSH'S PRACTICE of the SUPERIOR COURTS of COMMON LAW at WESTMINSTER, in Actions and Proceedings over which they have a common Jurisdiction: with Introductory Treatises respecting Parties to Actions; Attornies and Town Agents, their Qualifications, Rights, Duties, Privileges and Disabilities; the Mode of Suing, whether in Person or by Attorney in Formâ Pauperis, &c. &c. &c.; and an Appendix, containing the authorized Tables of Costs and Fees, Forms of Proceedings and Writs of Execution. Third Edition. By JOSEPH DIXON, of Lincoln's Inn, Esq., Barrister at Law.

Fry's Specific Performance of Contracts.

8vo., 16*s.* cloth.

A TREATISE on the SPECIFIC PERFORMANCE of CONTRACTS, including those of Public Companies, with a Preliminary Chapter on the Provisions of the Chancery Amendment Act, 1858. By EDWARD FRY, B.A., of Lincoln's Inn, Esq., one of Her Majesty's Counsel.

"It will be seen what a masterly grasp the author has taken of his subject, and his treatment of the various parts of it equally exhibits the hand of a man who has studied the law as a science. He is skilful in the extraction of principles, precise in the exposition of them, apt in their application to the particular case, but in all he is thoroughly practical. The practitioner who uses it as a text book will find in it an adviser who will tell him not only what the law is, but how it may be enforced."—*Law Times.*

"Mr. Fry's work presents in a reasonable compass a large quantity of modern learning on the subject of contracts, with reference to the common remedy by specific performance, and will thus be acceptable to the profession generally."—*Law Chronicle.*

"There is a closeness and clearness in its style, and a latent fulness in the exposition, which not only argue a knowledge of the law, but of those varying circumstances in human society to which the law has to be applied."—*Spectator.*

"Mr. Fry's elaborate essay appears to exhaust the subject, on which he has cited and brought to bear, with great diligence, some 1,500 cases, which include those of the latest reports."—*Law Magazine and Review.*

"Although a professional work, it is sufficiently popular in style to be serviceable to all persons engaged in commercial or joint-stock undertakings."—*The Times.*

"The law of specific performance is a growing law just now, and the characteristic which gives its special value to Mr. Fry's work is, that the recent cases are as well digested in his mind as the older ones. Mr. Fry's is one of the best specimens of the modern law book."—*The Economist.*

Bedford's Intermediate Examination Guide for 1874.

8vo., 10*s.* 6*d.* cloth.

The INTERMEDIATE EXAMINATION GUIDE: containing a Digest of the Examination Questions on Common Law, Conveyancing and Equity, with the Answers. By EDWARD HENSLOWE BEDFORD, Solicitor, Temple, Editor of the "Preliminary," "Intermediate" and "Final," &c.

"The students of the elements of law will find in Mr. Bedford's Guide a useful and reliable friend."—*Law Times.*

"We think we may fairly say that Mr. Bedford's Intermediate Examination Guide will prove very useful to candidates for the Law Institution."—*Law Journal.*

Will shortly be published, by the same author, VOL. II. *of the above Work, price 4s. (The Work appointed by the Examiner in Equity for* 1874 *is Haynes' Outlines of Equity.)*

Heales's History and Law of Pews.

2 vols. 8vo., 16*s.* cloth.

The HISTORY and LAW of CHURCH SEATS or PEWS. By ALFRED HEALES, F.S.A., Proctor in Doctors' Commons.

"Great pains have evidently been taken in the compilation of this work, which exhibits throughout an immense amount of research and a careful arrangement of cases and extracts."—*Law Magazine.*

"The work deserves a place in all public libraries, and doubtless many practitioners, especially those whose law learning has any antiquarian proclivities, will be glad to possess it. For original research and faithful labour in verifying references no other writer can lay any claim to come anywhere near Mr. Heales. The author deserves particular commendation for the conscientious labour with which he has traced up all his authorities."—*Solicitors' Journal.*

"The historical volume will be most interesting to the general reader, but the volume devoted to the law of the subject will be of great use to all persons—the clergy and churchwardens—who have anything to do with the administration of church affairs. It will also be found a valuable text-book by lawyers who are engaged in suits appertaining to the pew question. Altogether we can commend Mr. Heales' book as a well-conceived and well-executed work, which is evidence of the author's industry, talent and learning."—*Law Journal.*

"There can be no doubt but that great labour and research have been expended in the production of this work. The author has devoted great care and perspicacity to the treatment of his subject, to the student and the archæologist there is much in these volumes of great interest, and clergymen will find them a useful and reliable guide should questions arise connected with sittings in their respective churches."—*Justice of the Peace.*

"The subject is one very ably treated by Mr. Heales. We have gone through the second part, namely, that devoted to law, and find that it is admirable. The arrangement is good and the style clear. To the work are appended a list of cases and a good index. The book possesses amply sufficient merit to reach a second edition in a short time."—*Law Times.*

Clifford and Stephens's Practice of Referees Court, 1873.

Vols. I. and II., royal 8vo., 3*l.* 10*s.* cloth.

THE PRACTICE of the COURT of REFEREES on PRIVATE BILLS in PARLIAMENT, with Reports of Cases as to the locus standi of Petitioners during the Sessions 1867-68-69-70-71 and 72 By FREDERICK CLIFFORD and PEMBROKE S. STEPHENS, Barristers-at-Law.

"The history and practice of the subject are detailed tersely and accurately, and in a very intelligible manner, in the treatise. To counsel or agents engaged in parliamentary practice the work will prove extremely serviceable."—*Solicitors' Journal.*

"The reports, forming the most important part of the volume, are given with fulness and accuracy, so far as we can judge, and are of themselves a sufficient recommendation to the volume."—*Law Journal.*

"Clifford and Stephens, the authority now universally quoted and relied on in this (Referees) Court."—*Daily News.*

VOL. II. PART II., *containing the Cases decided during the Sessions* 1871 *and* 1872, *may be had separately,* 30*s. sewed.*

Phillips's Law of Lunacy.

Post 8vo., 18*s.* cloth.

THE LAW CONCERNING LUNATICS, IDIOTS and PERSONS of UNSOUND MIND. By CHARLES PALMER PHILLIPS, M.A., of Lincoln's Inn, Esq., Barrister at Law, and one of the Commissioners in Lunacy.

"Mr. C. P. Phillips has in his very complete, elaborate and useful volume presented us with an excellent view of the present law as well as the practice relating to lunacy."—*Law Magazine and Review.*

"The work is one on which the author has evidently bestowed great pains, and which not only bears the mark of great application and research, but which shows a familiarity with the subject."—*Justice of the Peace.*

Seaborne's Law of Vendors and Purchasers.

Post 8vo., 9*s.* cloth.

A CONCISE MANUAL of the LAW of VENDORS and PURCHASERS of REAL PROPERTY. By HENRY SEABORNE.

*** *This work is designed to furnish Practitioners with an easy means of reference to the Statutory Enactments and Judicial Decisions regulating the transfer of Real Property, and also to bring these authorities in a compendious shape under the attention of Students.*

"The value of Mr Seaborne's work consists in its being the most concise summary yet published of one of the most important branches of the law. The student will find this book a useful introduction to a dry and difficult subject."—*Law Examination Journal.*

"Intended to furnish a ready means of access to the enactments and decisions governing that branch of the law."—*The Times.*

"The book before us contains a good deal, especially of practical information as to the course of conveyancing matters in solicitors' offices, which may be useful to students."—*Solicitors' Journal.*

"We will do Mr. Seaborne the justice to say that we believe his work will be of some use to articled clerks and others in solicitors' offices, who have not the opportunity or inclination to refer to the standard works from which his is compiled."—*Law Journal.*

"The book will be found of use to the legal practitioner, inasmuch as it will, so far as regards established points of law, be a handier work of reference than the longer treatises we have named."—*Athenæum.*

Clark's Digest of House of Lords Cases.

Royal 8vo., 31*s.* 6*d.* cloth.

A DIGESTED INDEX to all the REPORTS in the HOUSE of LORDS from the commencement of the Series by Dow, in 1814, to the end of the Eleven Volumes of House of Lords Cases, with references to more recent Decisions. By CHARLES CLARK, of the Middle Temple, Esq., Barrister at Law, Reporter by Appointment to the House of Lords.

Barry's Practice of Conveyancing.

8vo., 18*s.* cloth.

A TREATISE on the PRACTICE of CONVEYANCING. By W. WHITTAKER BARRY, Esq., of Lincoln's Inn, Barrister at Law, late Holder of the Studentship of the Inns of Court, and Author of "A Treatise on the Statutory Jurisdiction of the Court of Chancery."

CHAP. 1. Abstracts of Title.—CHAP. 2. Agreements.—CHAP. 3. Particulars and Conditions of Sale.—CHAP. 4. Copyholds.—CHAP. 5. Covenants.—CHAP. 6. Creditors' Deeds and Arrangements.—CHAP. 7. Preparation of Deeds.—CHAP. 8. On Evidence.—CHAP. 9. Leases.—CHAP. 10. Mortgages.—CHAP. 11. Partnership Deeds and Arrangements.—CHAP. 12. Sales and Purchases.—CHAP. 13. Settlements.—CHAP. 14. Wills.—CHAP. 15. The Land Registry Act, 25 & 26 Vict. c. 53.—CHAP. 16. The Act for obtaining a Declaration of Title, 25 & 26 Vict. c. 67.—INDEX.

"The author of this valuable treatise on conveyancing has most wisely devoted a considerable part of his work to the practical illustration of the working of the recent Statutes on Registration of Title—and for this, as well as for other reasons, we feel bound to strongly recommend it to the practitioner as well as the student. The author has proved himself to be a master of the subject, for he not only gives a most valuable supply of practical suggestions, but criticises them with much ability, and we have no doubt that his criticism will meet with general approval."—*Law Magazine.*

"The author introduces a work which will be found a very acceptable addition to the law library, and to supply a want which we think has hitherto been felt. It contains, in a concise and readable form, the law relating to almost every point likely to arise in the ordinary every day practice of the conveyancer, with references to the various authorities and statutes to the latest date, and may be described as a manual of practical conveyancing."—*Law Journal.*

"This treatise supplies a want which has long been felt. There has been no treatise on the Practice of Conveyancing issued for a long time past that is adequate for the present requirements. Mr. Barry's work is essentially what it professes to be, a treatise on the Practice of Conveyancing, in which the theoretical rules of real property law are referred to only for the purpose of elucidating the practice. Mr. Barry appears to have a very accurate insight into the practice in every department of our real property system. Although we cannot boast, like Duval, of having ever read abstracts of title with pleasure, we have certainly read Mr. Barry's chapter on abstracts and numerous other parts of his work with very considerable satisfaction on account of the learning, great familiarity with practice, and power of exposition of its author. The treatise, although capable of compression, is the production of a person of great merit and still greater promise."—*Solicitors' Journal.*

"The Author's design was to do for the *practice* of conveyancing what Mr. Joshua Williams has done for its principles, to describe it simply, clearly and succinctly, recollecting that he was only laying the foundation and not crowning the edifice. A work the substance of which is so well known to our readers, needs no recommendation from us, for its merits are patent to all, from personal acquaintance with them. The information that the treatise so much admired may now be had in the more convenient form of a book, will suffice of itself to secure a large and eager demand for it."—*Law Times.*

Goldsmith's Equity.—Sixth Edition.

Post 8vo. 18*s.* cloth.

THE DOCTRINE AND PRACTICE OF EQUITY: or a concise Outline of Proceedings in the High Court of Chancery, designed principally for the Use of Students. Sixth Edition, according to the recent Statutes and Orders. By GEO. GOLDSMITH, Esq., M.A, Barrister-at-Law.

"A well-known law student's book, the best, because the most thoroughly complete, yet simplified instructor, in the principles and practice of equity that has ever been provided for him; and that its value has been recognized by those who have made use of it is proved by this—that their commendations have carried it to a sixth edition. The principles of equity are as they were, but the practice has so changed since the publication of the first edition, that every part of this division of the work has required to be rewritten almost as often as a new edition was demanded. Of course, the size of the book has grown also, and from being, as we remember it, a very little book, to be carried in the pocket, it has become a portly volume, and this fairly represents its increased merits. Now that every student aspiring to the bar is to be examined before admission, good books for instruction in the law will be more than ever in request"—*Law Times.*

"It is difficult to know which to praise most, the excellence and dignity of the style, or the exhaustiveness of the information furnished to the reader. Mr. Goldsmith's plan corresponds to some extent with that adopted by Mr. Haynes in his excellent 'Outlines of Equity,' but his work is more complete than that of Mr. Haynes."—*Law Examination Journal.*

"The whole work is elaborated by Mr. Goldsmith with evident care and a determination to deal with all that can come within the scope of the title. It is characterised by comprehensiveness and at the same time conciseness, by clearness of diction and attractiveness of style and avoidance of technicalities which might prove embarrassing to the student, and a close adherence to the purpose as expressed in the preface. Mr. Goldsmith's volume is marked by as much originality as well can be found in a work of its kind."—*Law Journal.*

"Altogether the author's method and his execution are alike commendable—and we are of opinion that the lawyer, who, as a student, avails himself of the primary intention of Mr. Goldsmith's work by finding in it his first equity reading book or *primer*, will afterwards verify the anticipation of the author by making of it *dilectu juvenili* or *vade mecum* in his later practice."—*Law Magazine, 2nd notice.*

Lewis's Introduction to Equity Drafting.

Post 8vo., 12*s.* cloth.

PRINCIPLES of EQUITY DRAFTING; with an Appendix of Forms. By HUBERT LEWIS, B.A., of the Middle Temple, Barrister at Law; Author of "Principles of Conveyancing," &c.

*** This Work, intended to explain the general principles of Equity Drafting, as well as to exemplify the Pleadings of the Court of Chancery, will, it is hoped, be useful to lawyers resorting to the *New Equity Jurisdiction of the County Courts.*

"We have little doubt that this work will soon gain a favorable place in the estimation of the profession. It is written in a clear attractive style, and is plainly the result of much thoughtful and conscientious labour."—*Law Magazine and Review.*

"Mr. Lewis's work is likely to have a much wider circle of readers than he could have anticipated when he commenced it, for almost every page will be applicable to County Court Practice, should the bill, in any shape or under any title, be retained in the new jurisdiction,—without it we fear that equity in the County Courts will be a mass of uncertainty,—with it every practitioner must learn the art of equity drafting, and he will find no better teacher than Mr. Lewis"—*Law Times.*

"This will, we think, be found a very useful work, not only to students for the bar and solicitors practising in the County Courts, as anticipated by the author, but also to the equity draftsman."—*Law Journal.*

Lewis's Introduction to Conveyancing.

8vo., 18*s.* cloth.

PRINCIPLES of CONVEYANCING explained and illustrated by Concise Precedents; with an Appendix on the effect of the Transfer of Land Act in modifying and shortening Conveyances. By HUBERT LEWIS, B.A., late Scholar of Emmanuel College, Cambridge, of the Middle Temple, Barrister at Law.

"We have, indeed, read it with pleasure and profit, and we may say at once that Mr. Lewis is entitled to the credit of having produced a very useful, and, at the same time, original work. This will appear from a mere outline of his plan, which is very ably worked out. The manner in which his dissertations elucidate his subject is clear and practical, and his expositions, with the help of his precedents, have the best of all qualities in such a treatise, being eminently judicious and substantial. Mr. Lewis's work is conceived in the right spirit. Although a learned and goodly volume, it may yet, with perfect propriety, be called a 'handy book.' It is besides a courageous attempt at legal improvement; and it is, perhaps, by works of such a character that law reform may be best accomplished."—*Law Magazine and Review.*

"'How to do it' might well be the motto of the author, and certainly no ordinary lawyer can peruse Mr. Hubert Lewis's book without making himself much more competent to prepare and understand conveyancing than he was before. On the whole we consider that the work is deserving of high praise, both for design and execution. It is wholly free from the vice of book making, and indicates considerable reflection and learning. Mr. Lewis has, at all events, succeeded in producing a work to meet an acknowledged want, and we have no doubt he will find many grateful readers amongst more advanced, not less than among younger, students. In an appendix, devoted to the Land Transfer Act of last session there are some useful and novel criticisms on its provisions."—*Solicitors' Journal.*

Kerr's Action at Law.—Third Edition.

12mo., 9*s.* cloth.

AN ACTION AT LAW: being an Outline of the Jurisdiction of the Superior Courts of Common Law, with an Elementary View of the Proceedings in Actions therein. By ROBERT MALCOLM KERR, Barrister at Law; now Judge of the Sheriff's Court of the City of London. Third Edition.

"There is considerable merit in both works (John William Smith's and Malcolm Kerr's); but the second (Kerr) has rather the advantage."—*Jurist.*

"Mr. Kerr's book is more full and detailed than that of Mr John William Smith, and is therefore better adapted for those who desire to obtain not merely a general notion but also a practical acquaintance with Common Law Procedure"—*Solicitors' Journal.*

Tudor's Leading Cases on Real Property, &c.—2nd Edit.

One thick vol. royal 8vo., 42*s.* cloth.

A SELECTION OF LEADING CASES on the LAW RELATING to REAL PROPERTY, Conveyancing, and the Construction of Wills and Deeds; with Notes. By OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister at Law. Author of "A Selection of Leading Cases in Equity." Second Edition.

"The Second Edition is now before us, and we are able to say that the same extensive knowledge and the same laborious industry as have been exhibited by Mr. Tudor on former occasions characterise this later production of his legal authorship; and it is enough at this moment to reiterate an opinion that Mr. Tudor has well maintained the high legal reputation which his standard works have achieved in all countries where the English language is spoken, and the decisions of our Courts are quoted."—*Law Magazine and Review.*

"The work before us comprises a digest of decisions which, if not exhaustive of all the principles of our real property code, will at least be found to leave nothing untouched or unelaborated under the numerous legal doctrines to which the cases severally relate. To Mr. Tudor's treatment of all these subjects, so complicated and so varied, we accord our entire commendation. There are no omissions of any important cases relative to the various branches of the law comprised in the work, nor are there any omissions or defects in his statement of the law itself applicable to the cases discussed by him. We cordially recommend the work to the practitioner and the student alike, but especially to the former."—*Solicitors' Journal.*

"This and the other volumes of Mr. Tudor are almost a law library in themselves, and we are satisfied that the student would learn more law from the careful reading of them than he would acquire from double the time given to the elaborate treatises which learned professors recommend the student to peruse, with entire forgetfulness that time and brains are limited, and that to do what they advise would be the work of a life. Smith and Mr Tudor will together give them such a knowledge of law as they could not obtain from a whole library of text books, and of law that will be useful every day, instead of law that they will not want three times in their lives. At this well the practising lawyer might beneficially refresh his memory by a draught, when a leisure hour will permit him to study a leading case. No law library should be without this most useful book."—*Law Times.*

Benham's Student's Examination Guide.

12mo. 3*s.* cloth.

THE STUDENT'S GUIDE to the PRELIMINARY EXAMINATION for ATTORNEYS and SOLICITORS, and also to the Oxford and Cambridge Local Examinations and the College of Preceptors; to which are added numerous Suggestions and Examination Questions, selected from those asked at the Law Institution. By JAMES ERLE BENHAM, of King's College, London.

"The book is artistically arranged. It will become a useful guide and instructor not only to law students but to every student who is preparing for a preliminary examination."—*Law Journal.*

"The book is written in a clear and agreeable style, and will no doubt be found useful by the class of readers for whom it is intended."—*Law Magazine and Review.*

"Mr. Benham has produced a very useful manual. He gives many suggestions on all the subjects of examination and full information thereon"—*Law Examination Reporter.*

"He has succeeded in producing a book which will doubtless prove useful. The sets of examination papers appear to be judiciously selected and are tolerably full."—*Irish Law Times.*

Tomkins and Jencken's Modern Roman Law.

8vo., 14s. cloth.

COMPENDIUM of the MODERN ROMAN LAW. Founded upon the Treatises of Puchta, Von Vangerow, Arndts, Franz Mœhler and the Corpus Juris Civilis. By FREDERICK J. TOMKINS, Esq., M.A., D.C.L., Author of the "Institutes of Roman Law," Translator of "Gaius," &c., and HENRY DIEDRICH JENCKEN, Esq., Barristers at Law, of Lincoln's Inn.

"Mr. Tomkins and Mr. Jencken could not have written such an excellent book as this if they had not devoted many laborious days, probably years, to the study of Roman Law in its entirety, and to research into the laws of continental states, for the purpose of learning what principles of Roman Law are preserved in their jurisprudence."—*Law Times.*

"To those who think with us that the study of the modern civil law has been too much neglected in the education of solicitors, the admirable book whose title we have above announced will be indeed invaluable."—*Law Examination Journal.*

"They have unquestionably given us a most valuable contribution on the literature of Roman Law, and one which ought to rapidly work its way to public favor."—*North British Mail.*

"We cordially wish success to a book which from the care bestowed upon it by two experienced authors can scarcely fail, we should hope, to take a respectable place among the educational works on Roman Law, which seem likely to form a special feature among the legal publications of the present epoch."—*Athenæum.*

"A valuable contribution to a kind of literature which English jurists are only now beginning to value at its true worth. Dr. Tomkins and his fellow-worker, Mr. H. D. Jencken, have bestowed much labour on their task."—*Echo.*

"Their work is well arranged and clearly written, and presents in an agreeable and readable form the principles of the great system of Roman Civil Law. It is admirably adapted for the use of students, while the copious references which it contains to the writings of the great civilians upon whose works it is based render it a valuable text-book for the more advanced practitioner."—*Irish Law Times.*

Latham's Law of Window Lights.

Post 8vo., 10s. cloth.

A TREATISE on the LAW of WINDOW LIGHTS. By FRANCIS LAW LATHAM, of the Inner Temple, Esq., Barrister at Law.

"This is not merely a valuable addition to the law library of the practitioner, it is a book that every law student will read with profit. It exhausts the subject of which it treats."—*Law Times.*

"His arrangement is logical, and he discusses fully each point of his subject. The work, in our opinion, is both perspicuous and able, and we cannot but compliment the author on it."—*Law Journal.*

"A treatise on this subject was wanted, and Mr. Latham has succeeded in meeting that want."—*Athenæum.*

"Mr. Latham is evidently one of those authors who like to have a complete skeleton of their subject elaborated before putting pen to paper; and the consequence is, that this little work is one which we have much pleasure in recommending to the profession. The sequence of discussion is well ordered, and the author's plan well adhered to; and although the text comprises less than 250 octavo pages, the subject is quite exhaustively treated. To solicitors the volume will, we think, be particularly serviceable. Armed with the work we have now reviewed, the practitioner will be in a fair way to cope successfully with the most *exigent* client who comes to consult him about his windows."—*Solicitors' Journal.*

"This subject has acquired a general commercial interest, and a clear concise work upon it is, at this time, very opportune. Mr. Latham's treatise on the Law of Window Lights appears to supply in a convenient form all the information which, in a general way, may be required. The text throughout is lucid and is well supported by precedents."—*Building News.*

"Mr. Latham has done well in providing a new treatise on the subject, and setting forth some of the more recent decisions of our courts. It is well arranged and clearly written. We recommend the book."—*Builder.*

Tudor's Law of Charitable Trusts.—Second Edition.

Post 8vo., 18s. cloth.

THE LAW OF CHARITABLE TRUSTS; with the Statutes to the end of Session 1870, the Orders, Regulations and Instructions, issued pursuant thereto; and a Selection of Schemes. By OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister-at-Law; Author of "Leading Cases in Equity;" "Real Property and Conveyancing;" &c. Second Edition.

"No living writer is more capable than Mr. Tudor of producing such a work: his Leading Cases in Equity, and also on the Law of Real Property, have deservedly earned for him the highest reputation as a learned, careful and judicious text-writer. We have only to add that the index is very carefully compiled."—*Solicitors' Journal.*

"Mr. Tudor's excellent little book on Charitable Trusts. It is in all respects the text-book for the lawyer, as well as a hand-book for reference by trustees and others engaged in the management of charities."—*Law Times.*

Gaius's Roman Law, by Tomkins and Lemon.

Complete in 1 vol. 8vo., 27*s.* cloth extra.

(*Dedicated by permission to Lord Chancellor Hatherley.*)

THE COMMENTARIES OF GAIUS ON THE ROMAN LAW: with an English Translation and Annotations. By FREDERICK J. TOMKINS, Esq., M.A., D.C.L., and WILLIAM GEORGE LEMON, Esq., LL.B. Barristers at Law, of Lincoln's Inn.

"We congratulate the authors on the production of a work creditable alike in its inception and its progress. The translation is on the whole satisfactory: the annotations are often valuable and compiled from trustworthy sources."—*Law Journal.*

"They have done a good service to the study of Roman Law, and deserve the thanks of those who take an interest in legal literature."—*Solicitors' Journal.*

"After a careful perusal of the present work, we feel bound to speak in the highest terms of the manner in which Mr. Tomkins and Mr. Lemon have executed their task. We have no hesitation in pronouncing the work to be a most valuable contribution to juristical learning, and we unhesitatingly recommend its careful perusal to all students of Roman Law."—*Law Magazine.*

"The translation is carefully executed, and the annotations show extensive knowledge of the Roman Law."—*Athenæum.*

"The book is in every respect one of the most valuable contributions, from an English source, to our legal literature which the last half century has witnessed."—*Edinburgh Evening Courant.*

"The want of an edition of the Commentaries of Gaius for English students has now been supplied by Dr. Tomkins and Mr. Lemon in a manner which leaves nothing to be desired. The translation of the Latin text is excellent; and the notes, upon which the value of the work mainly depends, are full of the most ample learning upon the matter of the text."—*Irish Law Times.*

"This is the first time that the text of Gaius has been translated into English, and it is remarkably well done by Messrs. Tomkins and Lemon in the part before us, who have also enriched the text by many valuable notes."—*Law Examination Reporter.*

Phillimore's Commentaries on International Law.

4 Vols. 8vo., 5*l.* 19*s.* cloth.

COMMENTARIES on INTERNATIONAL LAW. By the Right Hon. SIR ROBERT PHILLIMORE, Knt., now Judge of the High Court of Admiralty of England.

*** *Vol. 1, second edition, price 25s., Vol. 2, second edition, price 28s., Vol. 3, 2nd edition, price 36s., Vol. 4, price 30s., may be had separately to complete sets.*

Extract from Pamphlet on "American Neutrality," by GEORGE BEMIS *(Boston, U.S.).*—"Sir Robert Phillimore, the present Queen's Advocate, and author of the most comprehensive and systematic 'Commentary on International Law' that England has produced."

"The authority of this work is admittedly great, and the learning and ability displayed in its preparation have been recognized by writers on public law both on the Continent of Europe and in the United States. With this necessarily imperfect sketch we must conclude our notice of the first volume of a work which forms an important contribution to the literature of public law. The book is of great utility, and one which should find a place in the library of every civilian."—*Law Magazine.*

"We cordially welcome a new edition of vol. 1. It is a work that ought to be studied by every educated man, and which is of constant use to the public writer and statesman. We wish, indeed, that our public writers would read it more abundantly than they have done, as they would then avoid serious errors in discussing foreign questions. Any general criticism of a book which has been received as a standard work would be superfluous; but we may remark, that whilst Sir Robert strictly adheres to the canons of legal authorship, and never gives a statement without an authority or offers a conclusion which is not manifestly deducible from established facts or authoritative utterances, yet so lucid is his style, we had almost said so popular, so clear is the enunciation of principles, so graphic the historical portions, that the book may be read with pleasure as well as profit. It will not be out of place to further remark, that the arrangement is excellent, the table of contents, the list of authorities are complete, and, therefore, these Commentaries are singularly handy for reference. Altogether this work is a witness to the zeal, industry and ability of Sir R. Phillimore. It will not only be read at home, but also in the United States, and it cannot fail to smooth the way for the thorough international understanding between England and America that the true men of both countries so ardently desire."—*Law Journal.*

"It is the most complete repository of matters bearing upon international law that we have in the language. We need not repeat the commendations of the text itself as a treatise or series of treatises which this journal expressed upon the appearance of the two first volumes. The reputation of the Author is too well established and too widely known. We content ourselves with testifying to the fulness and thoroughness of the work as a compilation after an inspection of the three volumes (second edition)."—*Boston (United States) Daily Advertiser.*

Christie's Crabb's Conveyancing.—Fifth Edit. by Shelford.

Two vols. royal 8vo., 3*l.* cloth.

CRABB'S COMPLETE SERIES of PRECEDENTS in CONVEYANCING and of COMMON and COMMERCIAL FORMS in Alphabetical Order, adapted to the Present State of the Law and the Practice of Conveyancing; with copious Prefaces, Observations and Notes on the several Deeds. By J. T. CHRISTIE, Esq., Barrister-at-Law. The Fifth Edition, with numerous Corrections and Additions, by LEONARD SHELFORD, Esq., of the Middle Temple, Barrister-at-Law.

*** *This Work, which embraces both the Principles and Practice of Conveyancing, contains likewise every description of Instrument wanted for Commercial Purposes.*

General Table of Heads of Prefaces and Forms.

Abstracts.—Accounts.—Acknowledgments.—Acquittances.—Admittances.—Affidavits, Affirmations or Declarations.—Agreements: to relinquish Business: to Guarantee: for a Lease: before Marriage: for a Partition: between Principal and Agent: for the Sale and Purchase of Estates: for Sale of Copyhold Estates: for Sale of Leaseholds: for Sale of an Advowson.—Annuity: secured on Copyholds.—Annuities: Assigments of.—Appointments: of Guardians.—Apportionment.—Apprenticeship: to the Sea Service: to an Attorney: Assignment of.—Arbitration: Award.—Assignments: Bonds: Leases: Patents: Pews: Policies of Insurance: Reversionary Interests.—Attestations.—Attornments.—Auctions: Particulars of Sale.—Bargains and Sales: of Timber.—Bills of Sale of Goods.—Bonds: Administration: Receiver pending Suit: Post Obit: Stamps on.—Certificates.—Composition: Conveyances in Trust for Creditors.—Conditions: of Sale.—Confirmations.—Consents.—Copartnership: Dissolution of Copartnership.—Covenants: Stamps on: for Production of Title Deeds.—Declarations.—Deeds: I. Nature of Deeds in General: II. Requisites of a Deed: III. Formal parts of Deeds: IV. Where a Deed is necessary or otherwise: V. Construction of Deeds: VI. Avoiding of Deeds: VII. Proof of Deeds: VIII. Admission of Parol Evidence as to Deeds: IX. Possession of Deeds: X. Stamp Duty on Deeds.—Defeasances.—Demises.—Deputation.—Disclaimers.—Disentailing Deeds.—Distress: Notices of.—Dower.—Enfranchisements.—Exchanges.—Feoffments.—Further Charges.—Gifts.—Grants.—Grants of Way or Road.—Indemnities.—Leases: I. Nature of Leases in General: II. Requisites to a Lease: III. Parts of a Lease: IV. Incidents to a Lease: V. Stamps on Leases.—Letters of Credit.—Licences.—Mortgages: of Copyholds: of Leaseholds: Transfer of: Stamp Duty on.—Notes, Orders, Warrants, &c.—Notices: to Quit.—Partition.—Powers: of Attorney.—Presentation.—Purchase Deeds: Conveyance of Copyholds: Assignments of Leaseholds: Stamps on.—Recitals.—Releases or Conveyances: or Discharges.—Renunciations or Disclaimers.—Resignations.—Revocations.—Separation.—Settlements: Stamp Duty on.—Shipping: Bills of Lading: Bills of Sale: Bottomry and Respondentia Bonds: Charter Parties.—Surrenders.—Wills: 1. Definition of Will and Codicil: 2. To what Wills the Act 7 Will. 4 & 1 Vict. c. 26 does not apply: 3. What may be disposed of by Will: 4. Of the capacity of Persons to make Wills: 5. Who may or may not be Devisees; 6. Execution of Wills: 7. Publication of Wills: 8. Revocation of Wills: 9. Lapse of Devises and Bequests: 10. Provisions and Clauses in Wills: 11. Construction of Wills.

From the Law Times.

"The preparation of it could not have been confided to more able hands than those of Mr. Shelford, the veteran authority on real property law. With the industry that distinguishes him he has done ample justice to his task. In carefulness we have in him a second Crabb, in erudition Crabb's superior; and the result is a work of which the original author would have been proud, could it have appeared under his own auspices. It is not a book to be quoted, nor indeed could its merits be exhibited by quotation. It is essentially a book of practice, which can only be described in rude outline and dismissed with applause, and a recommendation of it to the notice of those for whose service it has been so laboriously compiled."

From the Solicitors' Journal.

"The collection of precedents contained in these two volumes are all that could be desired. They are particularly well adapted for Solicitors, being of a really practical character. They are moreover free from the useless repetitions of common forms that so much increase the bulk and expense of some collections that we could name. We know not of any collection of conveyancing precedents that would make it so possible for a tyro to put together a presentable draft at an exigency, or which are more handy in every respect, even for the experienced draftsman. Mr. Shelford has proved himself in this task to be not unworthy of his former reputation. To those familiar with his other works it will be a sufficient recommendation of this."

From the Law Magazine and Review.

"To this important part of his duty—the remodelling and perfecting of the Forms—even with the examination which we have already been able to afford this work, we are able to affirm, that the learned editor has been eminently successful and effected valuable improvements."

From the Law Chronicle.

"It possesses one distinctive feature in devoting more attention than usual in such works to forms of a commercial nature. We are satisfied from an examination of the present with the immediately preceding edition that Mr. Shelford has very considerably improved the character of the work, both in the prefaces and in the forms. On the whole the two volumes of Crabb's Precedents, as edited by Mr. Leonard Shelford, will be found extremely useful in a solicitor's office, presenting a large amount of real property learning, with very numerous precedents: indeed we know of no book so justly entitled to the appellation of 'handy' as the fifth edition of Mr. Crabb's Precedents."

Mosely's Articled Clerks' Handy-Book.

12mo., 7*s.* cloth.

A PRACTICAL HANDY-BOOK of ELEMENTARY LAW, designed for the use of Articled Clerks, with a Course of Study and Hints on Reading for the Intermediate and Final Examinations. By M. S. MOSELY, Solicitor, Clifford's Inn Prizeman, M. T. 1867.

"This useful little book is intended for the use of articled clerks during the period of their articles. The style of this book is peculiar: it is an exaggeration of the style adopted by Mr. Haynes in his admirable 'Outlines of Equity.' The author seems to think the adoption of such a style the only way to make the study of the law popular, and we are not prepared to say he is wrong."—*Law Magazine and Review.*

"The design of this little book is to combine instruction, advice and amusement, if anything amusing can be extracted from the routine of a solicitor's office and the studies of articled clerks. The book will certainly be found useful by any articled clerk, for it contains much information which it is sometimes very troublesome to find, and the facetiousness of Mr. Mosely's manner will doubtless help to grease the course of a rough and uneasy subject."—*Law Journal.*

"There are few who read this book with care who will not readily admit that on many intricate points of law their notions have become much clearer than before their acquaintance with it. Both parts are well worked out, and will be found useful; but in the second division of each chapter the law student will find most valuable information, as there Mr. Mosely not only marks out the course of reading which he recommends for each year, but also carefully analyses the contents of each book, and points out those chapters and subjects which it will be most advantageous for the student to master at the first reading, and those which he ought to defer till a second perusal and a wider experience have made him more competent to understand them. The style is remarkably good, and, considering the subject, free from technical expressions."—*Irish Law Times.*

Rouse's Copyhold Manual.—Third Edition.

12mo., 10*s.* 6*d.* cloth.

THE COPYHOLD ENFRANCHISEMENT MANUAL, giving the Law, Practice and Forms in Enfranchisements at Common Law and under Statute, and in Commutations; with the Values of Enfranchisements from the Lord's various Rights: the Principles of Calculation being clearly explained, and made practical by numerous Rules, Tables and Examples. Also all the Copyhold Acts, and several other Statutes and Notes. Third Edition. By ROLLA ROUSE, Esq., of the Middle Temple, Barrister at Law, Author of "The Practical Conveyancer," &c.

"This new edition follows the plan of its predecessor, adopting a fivefold division:—1. The Law. 2. The Practice, with Practical Suggestions to Lords, Stewards and Copyholders. 3. The Mathematical consideration of the Subject in all its Details, with Rules, Tables and Examples. 4. Forms. 5. The Statutes, with Notes. Of these, we can only repeat what we have said before, that they exhaust the subject; they give to the practitioner all the materials required by him to conduct the enfranchisement of a copyhold, whether voluntary or compulsory."—*Law Times.*

"When we consider what favor Mr. Rouse's Practical Man and Practical Conveyancer have found with the profession, we feel sure the legal world will greet with pleasure a new and improved edition of his copyhold manual. The third edition of that work is before us. It is a work of great practical value, suitable to lawyers and laymen. We can freely and heartily recommend this volume to the practitioner, the steward and the copyholder."—*Law Magazine.*

"Now, however, that copyhold tenures are being frequently converted into freeholds, Mr. Rouse's treatise will doubtless be productive of very extensive benefit; for it seems to us to have been very carefully prepared, exceedingly well composed and written, and to indicate much experience in copyhold law on the part of the author."—*Solicitors' Journal.*

Shelford's Succession, Probate and Legacy Duties. Second Edition.

12mo., 16*s.* cloth.

THE LAW relating to the PROBATE, LEGACY and SUCCESSION DUTIES in ENGLAND, IRELAND and SCOTLAND, including all the Statutes and the Decisions on those Subjects: with Forms and Official Regulations. By LEONARD SHELFORD, Esq., of the Middle Temple, Barrister-at-Law. The Second Edition, with many Alterations and Additions.

"The book is written mainly for solicitors. Mr. Shelford has accordingly planned his work with careful regard to its practical utility and daily use."—*Solicitors' Journal.*

"One of the most useful and popular of his productions, and being now the text book on the subject nothing remains but to make known its appearance to our readers. Its merits have been already tested by most of them."—*Law Times.*

"On the whole Mr. Shelford's book appears to us to be the best and most complete work on this extremely intricate subject."—*Law Magazine.*

Davis's Law of Master and Servant.

12mo. 6*s.* cloth.

THE MASTER AND SERVANT ACT, 1867 (30 & 31 Vict. c. 141), with an Introduction, copious Notes, Tables of Offences, and Forms of Proceedings, prepared expressly for this Work. By JAMES E. DAVIS, Esq., Barrister at Law, Stipendiary Magistrate, Stoke-upon-Trent.

*** *Besides the Act and copious Notes, Introduction, and a variety of Forms of Summons, Orders, Convictions, Recognizances, &c., specially prepared for this work, Tables have been framed classifying all the offences within the jurisdiction of Justices. It is hoped that this will be found useful, not only to Magistrates and their Clerks, but to the Legal Profession generally, for in consequence of the new Act not describing the offences, but merely referring to a schedule of seventeen former Acts, it is very difficult to say what cases are or are not within the purview of the new Act. The decisions of the Superior Courts, so far as they are applicable to the present law, are also given.*

Woolrych's Law of Sewers.—Third Edition.

8vo., 12*s.* cloth.

A TREATISE of the LAW of SEWERS, including the DRAINAGE ACTS. By HUMPHRY W. WOOLRYCH, Serjeant at Law. Third Edition, with considerable Additions and Alterations.

"Two editions of it have been speedily exhausted, and a third called for. The author is an accepted authority on all subjects of this class."—*Law Times.*

"This is a third and greatly enlarged edition of a book which has already obtained an established reputation as the most complete discussion of the subject adapted to modern times. Since the treatise of Mr. Serjeant Callis in the early part of the 17th century, no work filling the same place has been added to the literature of the Profession. It is a work of no slight labour to digest and arrange this mass of legislation; this task, however, Mr. Serjeant Woolrych has undertaken, and an examination of his book will, we think, convince the most exacting that he has fully succeeded. No one should attempt to meddle with the Law of Sewers without its help."—*Solicitors' Journal.*

Grant's Law of Corporations in General.

Royal 8vo., 26*s.* boards.

A PRACTICAL TREATISE on the LAW of CORPORATIONS in GENERAL, as well Aggregate as Sole; including Municipal Corporations; Railway, Banking, Canal, and other Joint-Stock and Trading Bodies; Dean and Chapters; Universities; Colleges; Schools; Hospitals; with *quasi* Corporations aggregate, as Guardians of the Poor, Churchwardens, Churchwardens and Overseers, etc.; and also Corporations sole, as Bishops, Deans, Canons, Archdeacons, Parsons, etc. By JAMES GRANT, Esq., of the Middle Temple, Barrister at Law.

J. Chitty, jun's. Precedents in Pleading.—Third Edition.

Complete in One Vol. Royal 8vo., 38*s.* cloth.

J. CHITTY, JUN'S. PRECEDENTS in PLEADING; with copious Notes on Practice, Pleading and Evidence. Third Edition. By the late TOMPSON CHITTY, Esq., and by LEOFRIC TEMPLE, R. G. WILLIAMS, and CHARLES JEFFERY, Esquires, Barristers at Law. (Part 2 may, for the present, be had separately, price 18*s.* cloth, to complete sets.)

Drewry's Equity Pleader.

12mo., 6*s.* cloth.

A CONCISE TREATISE on the PRINCIPLES of EQUITY PLEADING; with Precedents. By C. STEWART DREWRY, of the Inner Temple, Esq., Barrister at Law.

"It will be found of great utility as introductory to the more elaborate treatises, or to refresh the memory after the study of the larger books."—*Law Times.*

Scriven's Law of Copyholds.—5th Edit. by Stalman.

Abridged in 1 vol. royal 8vo., £1 : 10*s.* cloth.

A TREATISE ON COPYHOLD, CUSTOMARY FREEHOLD and ANCIENT DEMESNE TENURE, with the Jurisdiction of Courts Baron and Courts Leet. By JOHN SCRIVEN, Serjeant at Law. Fifth Edition, containing references to Cases and Statutes to 1867. By HENRY STALMAN, of the Inner Temple, Esq., Barrister at Law.

"No lawyer can see or hear the word 'copyhold' without associating with it the name of Scriven, whose book has been always esteemed not merely the best but the only one of any worth. Until a commutation of the tenure for a fixed rent-charge, after the manner of a tithe commutation, is compelled by the legislature, this treatise will lose none of its usefulness to the solicitors in the country."—*Law Times.*

"It would be wholly superfluous to offer one word of comment on the general body of the work. Scriven on Copyholds has for exactly half a century been not only a standard work but one of unimpeachable authority, and in its pages the present generation has learned all that is known of copyhold and customary tenures. All that is necessary to say is, that in the present edition of Scriven on Copyholds Mr. Stalman has omitted what it was useless to retain, and inserted what it was necessary to add. Until copyholds have disappeared utterly, it is at least certain that Scriven on Copyholds by Stalman will hold undisputed sway in the profession."—*Law Journal.*

Davis's Law of Registration and Elections.

One small 12mo. vol., 15*s.* cloth.

MANUAL OF THE LAW AND PRACTICE OF ELECTIONS AND REGISTRATION. Comprising all the Statutes, with Notes and Introduction, and a Supplement containing the Cases on Appeal down to 1869, the Rules relating to Election Petitions, and a complete Index to the whole Work. By JAMES EDWARD DAVIS, Esq., Barrister at Law, Author of "Manual of Practice and Evidence in the County Courts," &c.

"A work, which, in our judgment, is the handiest and most useful of the manuals which the Reform Act of 1867 has brought into existence."—*Law Magazine.*

"We think this the best of the new numerous works on this subject. It has a great advantage in its arrangement over those which are merely new editions of works published before the recent legislation. To read through consecutively, in order to obtain a fair mastery of the whole subject, we have no hesitation in highly recommending this work."—*Solicitors' Journal.*

"No one comes forward with better credentials than Mr. Davis, and the book before us seems to possess the qualities essential to a guide to a discharge of their duties by the officials. The scheme of Mr. Davis's work is very simple."—*Law Journal*

THE SUPPLEMENT *may be had separately, price* 3*s. sewed.*

Browning's Divorce and Matrimonial Causes Practice.

Post 8vo., 8*s.* cloth.

THE PRACTICE and PROCEDURE of the COURT for DIVORCE and MATRIMONIAL CAUSES, including the Acts, Rules, Orders, copious Notes of Cases and Forms of Practical Proceedings, with Tables of Fees and Bills of Costs. By W. ERNST BROWNING, Esq., of the Inner Temple, Barrister-at-Law.

Brandon's Law of Foreign Attachment.

8vo., 14*s.* cloth.

A TREATISE upon the CUSTOMARY LAW of FOREIGN ATTACHMENT, and the PRACTICE of the MAYOR'S COURT of the CITY OF LONDON therein. With Forms of Procedure. By WOODTHORPE BRANDON, Esq., of the Middle Temple, Barrister-at-Law.

Mr. Oke's Magisterial Works.

Oke's Laws as to Licensing Inns, &c. &c.; containing the Licensing Act, 1872, and the other Acts in force as to Alehouses, Beer-houses, Wine and Refreshment-houses, Shops, &c., selling Intoxicating Liquors, and Billiard and Occasional Licences. Systematically arranged, with Explanatory Notes, the authorized Forms of Licences, Tables of Offences, Index, &c. By GEORGE C. OKE, Chief Clerk to the Lord Mayor of London. Post 8vo. 10*s.* cloth.

"Mr. Oke has brought out by far the best edition of the act, or perhaps we should say a treatise on it. Everything appears to be given which can by possibility be required, and the forms are abundant."—*Law Times.*

"It is superfluous to recommend any work on magisterial law which bears the name of Mr. George C. Oke on the title page. That gentleman's treatises are standard authorities, and they deserve the esteem in which they are held. Mr. Oke is not only a well-read and industrious author, but he has a long and first-class experience in the administration of magisterial law. We are sure that lawyers who have licensing cases, and magistrates who have to administer the new act, will be very glad to hear that Mr. Oke has published a treatise on the subject. This treatise, which Mr. Oke modestly describes as little, is a comprehensive manual."—*Law Journal.*

"This treatise on the Licensing Laws is accurate and thoroughly practical. Of Mr. Oke's treatment of his subject we can speak with the highest praise. The book will no doubt at once take its place as the recognized guide for those who have to do with licensing law. The table of offences is especially valuable."—*Solicitors' Journal.*

Oke's Magisterial Synopsis; a Practical Guide for Magistrates, their Clerks, Attornies, and Constables; Summary Convictions and Indictable Offences, with their Penalties, Punishments, Procedure, &c., *being alphabetically and tabularly arranged:* with a Copious Index. *Eleventh Edition, much enlarged.* By GEORGE C. OKE, Chief Clerk to the Lord Mayor of London. In 2 vols. 8vo. 63*s.* cloth.

"The tenth edition of this valuable work was published so recently as 1868, and this fact is more eloquent of the merits of Mr. Oke's labours than any amount of commendation from us. It is only necessary that we should notice the appearance of this last (eleventh) edition, 1872, which we do with much pleasure."—*Law Times.*

"This is the eleventh edition of Mr. Oke's work since 1848, a fact which speaks for itself. The profession and the public have proved by experience the excellence of the book; and the personal supervision of the author is a guarantee that the present edition is equal to its predecessors. Mr. Oke's labour in preparing it must have been considerable, and the rapid growth of magisterial jurisdiction having rendered it necessary to insert much new matter and to rewrite and condense no small portion of the old. In the result, in spite of every effort made to keep down the bulk of the volume, it has been absolutely necessary to add 200 pages. The whole Synopsis now consists of nearly 1,600 pages of elaborately arranged and carefully digested information. It is needless to say that we cannot do more than indicate in very general terms the contents of this valuable work. Mr. Oke may well be proud of it. The result of his labours is highly creditable to him, and he deserves the thanks of all who in any capacity are engaged in the administration of justice."—*Solicitors' Journal.*

Oke's Magisterial Formulist; being a Complete Col- lection of Forms and Precedents for practical use in all Cases out of Quarter Sessions, and in Parochial Matters, by Magistrates, their Clerks, Attornies and Constables. By GEORGE C. OKE, Author of "The Magisterial Synopsis," &c. *Fourth Edition*, enlarged and improved. 8vo. 38*s.* cloth.

"This work is too well known to need eulogy. It is in universal use in magistrates' courts. The contents are brought down to the end of last year, and consequently it includes all the forms required by the new statutes and decisions of the six years that have elapsed since the publication of the third edition. It is a book that has been known so long, and so extensively, that no further description of it is needed now."—*Law Times.*

Oke's Handy Book of the Game and Fishery Laws; containing the whole Law as to Game, Licences and Certificates, Poaching Prevention, Trespass, Rabbits, Deer, Dogs, Birds and Poisoned Grain throughout the United Kingdom, and Private and Salmon Fisheries in England. Systematically arranged, with the Acts, Decisions, Notes, Forms, Suggestions, &c. By GEORGE C. OKE, Author of "The Magisterial Synopsis," &c. *Second Edition.* 12mo. 10*s.* 6*d.* cloth.

"Mr. Oke's name on a title page is a guarantee for at least a thoroughly *practical* work. He knows precisely what is wanted, and he supplies it. The arrangement is new and very convenient. It is what it professes to be, a handbook for the sportsman and his legal adviser."—*Law Times.*

Mr. Oke's Magisterial Works—*continued.*

Oke's Law of Turnpike Roads; comprising the whole

of the General Acts now in force, including those of 1861; the Acts as to Union of Trusts, for facilitating Arrangements with their Creditors, as to the interference by Railways with Roads, their non-repair, and enforcing contributions from Parishes, &c., practically arranged. With Cases, copious Notes, all the necessary Forms, and an elaborate Index, &c. By GEORGE C. OKE. *Second Edition.* 12mo. 18*s.* cloth.

"All Mr. Oke's works are well done, and his 'Turnpike Laws' is an admirable specimen of the class of books required for the guidance of magistrates and legal practitioners in country districts."—*Solicitors' Journal.*

Shelford's Law of Railways.—Fourth Edition by Glen.

In 2 thick vols. royal 8vo., 63*s.* cloth.

SHELFORD'S LAW of RAILWAYS; containing the whole of the Statute Law for the Regulation of Railways in England, Scotland and Ireland: with copious Notes of Decided Cases upon the Statutes, Introduction to the Law of Railways, and Appendix of Official Documents. Fourth Edition. By WILLIAM CUNNINGHAM GLEN, Barrister-at-Law, Author of the "Law of Highways," "Law of Public Health and Local Government," &c.

From the LAW MAGAZINE.

"Though we have not had the opportunity of going conscientiously through the whole of this elaborate compilation, we have been able to devote enough time to it to be able to speak in the highest terms of the judgment and ability with which it has been prepared. Its execution quite justifies the reputation which Mr. Glen has already acquired as a legal writer, and proves that no one could have been more properly singled out for the duty he has so well discharged. *The work must take its unquestionable position as the leading Manual of the Railway Law of Great Britain.* The cases seem to have been examined, and their effect to be stated with much care and accuracy, and no channel from which information could be gained has been neglected. Mr. Glen, indeed, seems to be saturated with knowledge of his subject. The value of the work is greatly increased by a number of supplemental decisions, which give all the cases up to the time of publication, and by an index which appears to be thoroughly exhaustive."

From the LAW TIMES.

"Mr. Glen has done wisely in preserving that reputation, and, as far as possible, the text of Shelford—though very extensive alterations and additions have been required. But he has a claim of his own. He is a worthy successor of the original author, and possesses much of the same industry, skill in arrangement and astuteness in enumerating the points really decided by cited cases. But we have said enough of a work already so well known. It will have a place not in the library of the lawyer alone. It is a book which every railway office should keep on its shelf for reference."

From the LAW JOURNAL.

"Mr. Glen has modestly founded his work as a superstructure on that of Mr. Leonard Shelford, but he has certainly claims to publish it as a purely independent composition. The toil has been as great, and the reward ought to be as complete, as if Mr. Glen had disregarded all his predecessors in the production of treatises on railway law. Since the year 1864 he has been unceasingly engaged in collecting materials, and though he has been ready for the printer for some time, and has delayed the appearance of the volumes in the expectation of legislative changes in railway law, yet he has expended full five years of care and attention on his work. Let us hope that he will have no cause to think his labour has been in vain. *At any rate we may venture to predict that Mr. Cunningham Glen's edition of Shelford on Railways will be the standard work of our day in that department of law.*"

From the JUSTICE OF THE PEACE.

"Far be it from us to undervalue Mr. Shelford's labours, or to disparage his merits. But we may nevertheless be permitted to observe that *what has hitherto been considered as the 'best work on the subject'* (Shelford) *has been immeasurably improved by the application of Mr. Glen's diligence and learning.* Sufficient, however, has been done to show that it is in every respect worthy of the reputation which the work has always enjoyed. We feel little doubt that the credit of that work will be greatly increased by Mr. Glen's instrumentality, and that not only will he have ably maintained its reputation by his successful exertions, but that he will have added materially to it."

From the SOLICITORS' JOURNAL.

"The practitioner will find here collected together all the enactments bearing on every possible subject which may come before him in connection with railways or railway travelling. Whatever questions may arise the lawyer who has this book upon his shelves, may say to himself 'If there has been any legislation at all connected with this branch of the subject I shall at once find it in Shelford;' and it needs not to be said that on this account the book will be a very 'comfortable' one to possess. The collection is equally exhaustive in the matter of rules, orders, precedents and documents of official authority. To sum up our review; as a collection of statutes and general information the work will prove extremely useful, because in these respects it is so perfectly exhaustive."

Robson's Bankrupt Law.—Second Edition.

8vo., 34s. cloth.

A TREATISE on the LAW of BANKRUPTCY; containing a full Exposition of the Principles and Practice of the Law, including the Alterations made by the Bankruptcy Act, 1869. With an Appendix comprising the Statutes, Rules, Orders and Forms. By GEORGE YOUNG ROBSON, Esq., of the Inner Temple, Barrister-at-Law. Second Edition.

"We are glad to welcome a second edition of this valuable work, the first edition of which we reviewed about two years ago. While the arrangement and form of the book have remained unaltered, the author has not contented himself with merely adding the recent decisions to the old text, for the whole law on the subject, old as well as new, has evidently been carefully considered in the interval between the two editions, and many old cases are now noted which were not referred to in the first edition. The tendency of all books on Bankruptcy is, of course, just now to increase very much in bulk; but Mr. Robson's conciseness of style has enabled him to keep his work within reasonable limits. The present edition contains, amongst other additional matter, a chapter on 'The Bills of Sale Act, 1854;" and that Act and the subsequent Act of 1866 are given at length in the Appendix. We notice also as an improvement in printing the Bankruptcy Act and Rules, that reference is made at the end of each section and rule to the pages of the text where the subject of such section or rule is discussed. The index to the work, so far as we have been able to examine it, is a remarkably good one. On the whole we have no hesitation in saying that the Author has considerably improved an originally meritorious and useful book, which we recommend very heartily to the profession at large."—*Solicitors' Journal.*

"We must take advantage of the best guide we can find to help us along in the dark and dubious ways of Bankruptcy Law; and Mr. Robson is undoubtedly one of the best guides we can find. It is with great pleasure that we learn from the preface to this work that the first edition of this work was well received, and that it achieved the success it so well deserved. Mr. Robson has continued studying the subject, and has kept himself up in the law upon which he writes. He has also added to this new edition a chapter on 'The Bills of Sale Act, 1854,' which cannot but be useful to his readers. The book itself is now so well known to the profession that we need not dwell upon its proved merits, its careful preparation, great learning, and skilful arrangement."—*Law Magazine.*

Chadwick's Probate Court Manual.

Royal 8vo., 12s. cloth.

EXAMPLES of ADMINISTRATION BONDS for the COURT of PROBATE; exhibiting the Principle of various Grants of Administration, and the correct Mode of preparing the Bonds in respect thereof; also Directions for preparing the Oaths, arranged for practical utility. With Extracts from the Statutes; also various Forms of Affirmation prescribed by Acts of Parliament, and a Supplemental Notice, bringing the work down to 1865. By SAMUEL CHADWICK, of Her Majesty's Court of Probate.

"We undertake to say that the possession of this volume by practitioners will prevent many a hitch and awkward delay, provoking to the lawyer himself and difficult to be satisfactorily explained to the clients."—*Law Magazine and Review.*

Mr. Chadwick's volume will be a necessary part of the law library of the practitioner, for he has collected precedents that are in constant requirement. This is purely a book of practice, but therefore the more valuable. It tells the reader what *to do*, and that is the information most required after a lawyer begins to practise."—*Law Times.*

Parkinson's Common Law Chamber Practice.

12mo., 7s. cloth.

A HANDY BOOK FOR THE COMMON LAW JUDGES' CHAMBERS. By GEO. H. PARKINSON, Chamber Clerk to the Hon. Mr. Justice Byles.

"For this work Mr. Parkinson is eminently qualified."—*Jurist.*

"It is extremely well calculated for the purpose for which it is intended. So much work is now done in Common Law Chambers by junior clerks that such a little treatise is much wanted. Mr. Parkinson has performed his task skilfully and with care."—*Solicitors' Journal.*

"The practice in Chambers has become sufficiently important to call for a treatise devoted to it, nor could a more competent man for the task have presented himself than Mr. Parkinson, whose great experience as well as intelligence have long placed him in the position of an authority on all matters appertaining to this peculiar but very extensive branch of Common Law Practice."—*Law Times.*

"There is much that would prove very useful to the practitioner in Mr. Parkinson's compilation, and which, so far as we are aware, is not to be found in any other book collected with equal conciseness."—*Law Magazine and Review.*

Glen's Poor Law Orders.—Seventh Edition.

Post 8vo., 21*s.* cloth.

The GENERAL CONSOLIDATED and other ORDERS of the POOR LAW COMMISSIONERS and the POOR LAW BOARD; with explanatory Notes elucidating the Orders, Tables of Statutes, Cases and Index to the Orders and Cases. By W. C. GLEN, Esq., Barrister at Law. Seventh Edition.

Bulley and Bund's Bankruptcy Manual: with Supplement.

12mo., 16*s.* cloth.

A MANUAL of the LAW and PRACTICE of BANKRUPTCY as Amended and Consolidated by the Statutes of 1869: with an APPENDIX containing the Statutes, Orders and Forms. By JOHN F. BULLEY, B.A., of the Inner Temple, Esq., Barrister at Law, and J. W. WILLIS-BUND, M.A., LL.B., of Lincoln's Inn, Esq., Barrister at Law. With Supplement, including the Orders to 30th April, 1870.

THE SUPPLEMENT *may be had separately*, 1*s. sewed.*

"It would be impossible, within our limits, to place before our readers any worthy resumé of this complete Manual. The essential merit of the work is completeness, and we think we may assure our readers that work so well done will meet with its reward."—*Law Magazine.*

Coombs' Manual of Solicitors' Bookkeeping.

8vo., 10*s.* 6*d.* cloth.

A MANUAL of SOLICITORS' BOOKKEEPING: comprising Practical Exemplifications of a Concise and Simple Plan of Double Entry, with Forms of Account and other Books relating to Bills, Cash, &c., showing their Operation, giving Instructions for Keeping, Posting and Balancing them, and Directions for Drawing Costs, adapted to a large or small, sole or partnership business. By W. B. COOMBS, Law Accountant and Costs Draftsman.

*** *The various Account Books described in the above System, the forms of which are copyright, may be had from the Publishers at the prices stated in the work, page* 274.

"It adds some excellent instructions for drawing bills of costs. Mr. Coombs is a practical man, and has produced a practical book."—*Law Times.*

"He has performed his task in a masterly manner, and in doing so has given the why and the wherefore of the whole system of Solicitors' Bookkeeping. The volume is the most comprehensive we remember to have seen on the subject, and from the clear and intelligible manner in which the whole has been worked out it will render it unexceptionable in the hands of the student and the practitioner."—*Law Magazine.*

"So clear do the instructions appear, that a tyro of average skill and abilities, with application, could under ordinary circumstances open and keep the accounts of a business; and, so far as we can judge, the author has succeeded in his endeavour to divest Solicitors' Bookkeeping of complexity, and to be concise and simple, without being inefficient."—*Law Journal.*

"This is not merely a valuable addition to the library of every solicitor, it is a book that every articled clerk, now that intermediate examinations embrace bookkeeping, will be read with profit and benefit to himself. It may be fairly said to exhaust the subject of which it treats."—*Solicitors' Journal.*

Lushington's Naval Prize Law.

Royal 8vo., 10*s.* 6*d.* cloth.

A MANUAL of NAVAL PRIZE LAW By GODFREY LUSHINGTON, of the Inner Temple, Esq., Barrister at Law.

Lovesy's Law of Arbitration (Masters and Workmen).

12mo. 4*s.* cloth.

(*Dedicated, by permission, to Lord St. Leonards.*)

THE LAW of ARBITRATION between MASTERS and WORKMEN, as founded upon the Councils of Conciliation Act of 1867 (30 & 31 Vict. c. 105), the Masters and Workmen Act (5 Geo. 4, c. 96), and other Acts, with an Introduction and Notes. By C. W. LOVESY, Esq., of the Middle Temple, Barrister at Law.

Hertslet's Commercial Treaties.

8vo., Vol. XII., 40*s.* cloth.

HERTSLET'S TREATIES of Commerce, Navigation, Slave Trade, Post Office Communications, Copyright, &c., at present subsisting between Great Britain and Foreign Powers. Compiled from Authentic Documents by EDWARD HERTSLET, Esq., Librarian and Keeper of the Papers of the Foreign Office. Vol. XII. includes an INDEX OF SUBJECTS to the Twelve published Volumes, which is also sold separately, price 10*s.* in cloth boards.

*** *Vol.* 1, *price* 12*s.*; *Vol.* 2, *price* 12*s.*; *Vol.* 3, *price* 18*s.*; *Vol.* 4, *price* 18*s.*; *Vol.* 5, *price* 20*s.*; *Vol.* 6, *price* 25*s.*; *Vol.* 7, *price* 30*s.*; *Vol.* 8, *price* 30*s.*; *Vol.* 9, *price* 30*s.*; *Vol.* 10, *price* 30*s.*; *Vol.* 11, *price* 30*s.*; *may be had separately to complete sets, or the Work may be had complete in Twelve Volumes, price* £14 : 15*s.*, *boards.*

LIST OF SUBJECTS:—Aliens—Army—Bankruptcy—Births Abroad—Boundaries—Brokers—Burial Grounds Abroad—Chapels, Chaplains, &c., Abroad—Claims—Coal—Coasting Trade—Collisions at Sea—Colonial—Commerce and Navigation (Treaties, &c.)—Consuls—Copyright—Criminals: Murder—Currency—Deaths Abroad—Deserters—Diplomatic—Duties; Vessels and Cargoes—Emigration and Immigration—Enlistments—Extradition—Factories—Fisheries, &c.—Flags—Free Ports—Government—Jurisdiction—Justice—Labourers—Law—Light Dues, &c.—Loans—Lotteries—Maritime Law—Marriages, Births, Deaths, &c.—Mediations, Awards, &c.—Medical—Most Favoured Nation—Navigation—Navy—Neutrality—Offenders (Criminals)—Orders, Medals, &c.—Passenger Vessels, &c.—Passports—Patents—Pensions, &c.—Pilotage: Pilots—Piracy: Pirates—Postal (Treaties, &c.)—Postal (Warrants, Acts, &c.)—Precedence—Privileges: Vessels and Cargoes—Prizes, Seizures, &c.—Property—Quarantine—Reciprocity—Religion: Chapels, &c.—Revenues (Foreign)—Right of Search and Visit—Rivers, Lakes, &c.—Seamen—Shipping Dues, &c.—Shipwrecks—Slave Trade: Slavery, &c.—Smuggling—Sound Dues—Stade Toll—Sugar—Tariffs—Taxes—Telegraph—Territories—Trade—Trade Marks—Trade and Navigation—War, &c.—Wills—Wrecks and Salvage—Yachts.

Trower's Church Building Laws.

Post 8vo., 8*s.* cloth.

THE LAW of the BUILDING of CHURCHES, PARSONAGES, and SCHOOLS, and of the Division of Parishes and Places. By CHARLES FRANCIS TROWER, M.A., of the Inner Temple, Esq., Barrister at Law, late Fellow of Exeter College, Oxford, and late Secretary of Presentations to Lord Chancellor Westbury.

"We may pronounce it a useful work. It contains a great mass of information of essential import, and those who, as parishioners, legal advisers, or clergymen, are concerned with glebes, endowments, district chapelries, parishes, ecclesiastical commissions, and such like matters, about which the public, and notably the clerical public, seem to know but little, but which it is needless to say are matters of much importance."—*Solicitors' Journal.*

"His book is just the one we could wish every clergyman to possess, for if it was in the hands of our readers they would be saved the trouble of asking us very many questions."—*Clerical Journal.*

"In a well-arranged volume this gentleman points out concisely and intelligibly how the difficulties which usually beset parties in such matters may be avoided."—*Oxford University Herald.*

"On all the topics germane to its title this volume will be found a handy book of ecclesiastical law, and should on that account be made widely known among the clergy."—*Church Mail.*

"It is a compact and handy treatise, very clearly written, well arranged, easy of reference, and, besides a good table of contents, it has an elaborate index. It is a book we are glad to have and to recommend."—*Literary Churchman.*

Field's Law Relating to Curates, &c.

Post 8vo., 6*s.* cloth

The LAW RELATING to PROTESTANT CURATES and the RESIDENCE of INCUMBENTS or their BENEFICES in ENGLAND and IRELAND. By C. D. FIELD, M.A., LL.D., late Scholar of Trin. Coll. Dublin, and now of H. M.'s Bengal Civil Service; recently Judge of the Principal Court of Small Causes at Kishnaghur; and Registrar of H. M.'s High Court of Judicature at Fort William in Bengal; Author of "The Law of Evidence in India," &c.

Saunders' Law of Negligence.

1 vol., post 8vo., 9*s.* cloth.

A TREATISE on the LAW applicable to NEGLIGENCE. By THOMAS W. SAUNDERS, Esq., Barrister at Law, Recorder of Bath.

"The book is admirable; while small in bulk, it contains everything that is necessary, and its arrangement is such that one can readily refer to it. Amongst those who have done good service, Mr. Saunders will find a place."—*Law Magazine.*

"In the useful little volume now before us he has gathered the whole law of negligence. All his works are distinguished by painstaking and accuracy. This one is no exception; and the subject, which is of very extensive interest, will insure for it a cordial welcome from the profession."—*Law Times.*

"The references to the cases are given much more fully, and on a more rational system than is common with text book writers. He has a good index; he has produced a work which will facilitate reference to the authorities."—*Solicitors' Journal.*

"As a work of reference the book will be very welcome in the office of the solicitor or in the chambers of the barrister."—*Morning Advertiser.*

"A short and clear treatise like the present on the law relating to the subject ought to be welcomed. It is a moderate size volume, and makes references to all the authorities on the question easy."—*Standard.*

"It is a great advantage to the legal profession to find all the law of negligence collected and arranged in a manual of reasonable size. Such is Mr. Saunders' book."—*Public Opinion*

"A serviceable and seasonable treatise on the law of negligence, by Thomas W. Saunders, Esq., Recorder of Bath."—*Telegraph.*

"A careful treatise on a branch of law which is daily acquiring importance. The manual before us is a useful treatise."—*Echo.*

Ingram's Law of Compensation.—2nd Edit. by Elmes.

Post 8vo., 12*s.* cloth.

COMPENSATION to LAND and HOUSE OWNERS: being a Treatise on the Law of the Compensation for Interests in Lands, &c. payable by Railway and other Public Companies; with an Appendix of Forms and Statutes. By THOMAS DUNBAR INGRAM, of Lincoln's Inn, Esq., Barrister at Law. Second Edition. By J. J. ELMES, of the Inner Temple, Esq., Barrister at Law.

"We say at once that it is a work of great merit. It is a concise, clear and complete exposition of the law of compensation applicable to the owners of real property and railway and other companies."—*Law Magazine.*

"Whether for companies taking land or holding it, Mr Ingram's volume will be a welcome guide. With this in his hand the legal adviser of a company, or of an owner and occupier whose property is taken, and who demands compensation for it, cannot fail to perform his duty rightly."—*Law Times.*

"This work appears to be carefully prepared as regards its matter. This edition is a third larger than the first; it contains twice as many cases, and an enlarged index. It was much called for, and doubtless will be found very useful to the practitioner."—*Law Magazine, second notice.*

Cutler's Law of Naturalization.

12mo., 3*s.* 6*d* cloth.

THE LAW of NATURALIZATION; as Amended by the Acts of 1870. By JOHN CUTLER, B A., of Lincoln's Inn, Barrister at Law, Editor of "Powell's Law of Evidence," &c.

"The author's position as Professor of English Law and Jurisprudence is a guarantee of his legal competence, whilst his literary abilities have enabled him to clothe his legal knowledge in language which laymen can understand without being misled by it."—*John Bull.*

"Mr Cutler, in the work before us, lucidly explains the state of the law previous to the recent statute, and shows the alterations produced by it, so that a careful perusal of this book will enable the reader fully to comprehend the present state of the law upon this most important subject."—*Justice of the Peace.*

"This little work will be found of use to our countrymen resident abroad, as well as to foreigners resident in this country."—*Public Opinion.*

"The book is a model of what a treatise of its kind should be."—*Sunday Times.*

"A very convenient hand-book to the law of naturalization, as amended by the Acts of 1870."—*Weekly Times.*

"To anyone not having much previous acquaintance with the subject, who wishes for a general sketch of the law affecting aliens, as it was, and as it is now, this book will be useful."—*Solicitors' Journal.*

"It has been carefully compiled, and the authorities referred to are accurately cited."—*Pall Mall Gazette.*

Wright's Law of Conspiracy.

8vo., 4s. cloth.

THE LAW of CRIMINAL CONSPIRACIES and AGREEMENTS. By R. S. WRIGHT, of the Inner Temple, Barrister at Law, Fellow of Oriel Coll., Oxford.

"It is with great pleasure that we notice this short but very able and thorough work. It shows not merely unsparing and well-directed research, but a power of discrimination and analysis of which it is rarely our good fortune to meet with, and its matter is conveyed in language equally remote from the dry and withered style of the ordinary text book and from the oracular dictum in which too many of the modern school of jurisprudence enshrine their fine ideas."—*Solicitors' Journal.*

Michael and Will's Law of Gas and Water Supply.

Post 8vo., 18s. cloth.

THE LAW of GAS and WATER SUPPLY; comprising the Rights and Duties as well of Local Authorities as of Private Companies in regard thereto, and including the Legislation of the last Session of Parliament. By W. H. MICHAEL and J. SHIRESS WILL, Esqrs., Barristers at Law.

"An honest and a successful attempt to deal with the laws affecting gas and water supply."—*Law Journal.*

"We feel thoroughly justified in recommending the volume to the attention of the companies, the public and the profession."—*Law Times.*

"On the whole, we can thoroughly recommend the work to those who require guidance on the subject."—*Solicitors' Journal.*

Hunt on Frauds and Bills of Sale.

Post 8vo., 9s. cloth.

The LAW relating to FRAUDULENT CONVEYANCES, under the Statutes of Elizabeth and the Bankrupt Acts: with Remarks on the Law relating to Bills of Sale. By ARTHUR JOSEPH HUNT, of the Inner Temple, Esq., Barrister at Law, Author of "The Law relating to Boundaries, Fences and Foreshores."

"This work is calculated to be of service to the profession. Mr. Hunt has brought to bear upon the subject a clearness of statement, an orderliness of arrangement and a subtlety of logical acuteness which carry him far towards a complete systematization of all the cases. Neither has his industry been lacking: the cases that have arisen under the Bankruptcy Act, 1869, and under the Bills of Sale Act have been carefully and completely noted up and disposed of by him in their appropriate places. The index also is both accurate and careful and secures much facility of reference to the various matters which are the subjects of the work."—*Law Magazine.*

"Though smaller in size, Mr. Hunt's book deals with fraudulent conveyances under the Bankruptcy Acts, a subject which Mr. May in his work left almost untouched, although his book has the undoubted merit of being the first to break fresh ground in treating fraudulent conveyances in a separate volume. In reviewing that book last year we took occasion, while praising the industry and care with which it was compiled, to remark on the obscurity of its style. In this respect its younger rival has considerable advantage. Mr. Hunt's book is as readable as a treatise on so technical a subject can well be made. Mr. Hunt's arrangement of his materials follows an orderly and intelligible plan. The index is apparently carefully prepared, and the table of cases shews that none of the recent cases have been overlooked. Mr. Hunt has produced a really useful book unencumbered by useless matter, which deserves great success as a manual of the law of fraudulent dispositions of property."—*Law Journal.*

"The author has collected with industry and care the authorities bearing on the question he has undertaken to deal with. The matter is conveniently broken up, and the reader is assisted by a good index."—*Solicitors' Journal.*

Smith's Practice of Conveyancing.

Post 8vo., 6s. cloth.

AN ELEMENTARY VIEW of the PRACTICE of CONVEYANCING in SOLICITORS' OFFICES; with an Outline of the Proceedings under the Transfer of Land and Declaration of Title Acts, 1862, for the use of Articled Clerks. By EDMUND SMITH, B.A., late of Pembroke College, Cambridge. Attorney and Solicitor.

Tomkins' Institutes of Roman Law.

Part I. royal 8vo. (to be completed in Three Parts) 12*s.* cloth.

THE INSTITUTES OF THE ROMAN LAW. PART I. The Sources of the Roman Law and its external History to the decline of the Eastern and Western Empires. By FREDERICK J. TOMKINS, M.A., D.C.L., Barrister-at-Law, of Lincoln's Inn.

Questions on Stephen's Blackstone.

8vo., 10*s.* 6*d.* cloth.

QUESTIONS for LAW STUDENTS on the SIXTH EDITION of Mr. SERJEANT STEPHEN'S NEW COMMENTARIES on the LAWS of ENGLAND. By JAMES STEPHEN, LL.D., County Court Judge.

Glen's Law of Highways.—Second Edition.

Post 8vo., 20*s.* cloth.

The LAW of HIGHWAYS: comprising the Highway Acts 1835, 1862 and 1864; the South Wales Highway Act; the Statutes and Decisions of the Courts on the subject of Highways, Bridges, Ferries, &c., including the Duties of Highway Boards, Surveyors of Highways, the Law of Highways in Local Board of Health Districts; Highways affected by Railways, and Locomotives on Highways. With an Appendix of Statutes in force relating to Highways. By W. CUNNINGHAM GLEN, Esq., Barrister at Law. Second Edition.

"Altogether we may confidently venture to confirm the statement in the preface that it may now fairly claim to be recognized as a standard authority on the law of highways by those who are engaged officially or otherwise in the administration of that branch of the law. It is so as we from personal knowledge can affirm, and, we may add, that it is received by them as a trustworthy guide in the discharge of their onerous duties."—*Law Times.*

"The present edition of Mr. Glen's work contains a great deal of valuable matter which is entirely new. To those interested in the law of highways this manual as it now appears will be found a safe and efficient guide."—*Law Magazine.*

"This work aspires above others which profess merely to be annotated reprints of acts of parliament. It will be found to contain much information which might be looked for elsewhere in vain. The general law upon the subject is set forth with a care and lucidity deserving of great praise, and a good index facilitates reference, and renders this work the most complete on this important subject which has yet been published."—*Justice of the Peace.*

"It has the advantages, by no means unworthy of consideration, of being well printed and well indexed, as well as well arranged, and a copious index of statutes renders it a perfect compendium of the authorities bearing in any way on the law of highways."—*Solicitors' Journal.*

Glen's Law of Public Health.—Sixth Edition,

AND SUPPLEMENT, 1873.

8vo., 36*s.* cloth.

The LAW relating to PUBLIC HEALTH and LOCAL GOVERNMENT, including the Law relating to the Removal of Nuisances injurious to Health, the Prevention of Diseases, and Sewer Authorities; with the Statutes and Cases. By W. CUNNINGHAM GLEN, of the Middle Temple, Esq., Barrister at Law. Sixth Edition, *with Supplement*, 1873.

*** *The Supplement containing the relative Acts of* 1872 *may be had separately, price* 7*s.* 6*d. cloth.*

Glen's Poor Law Statutes, 1873.

2 vols. 8vo., 2*l.* 12*s.* 6*d.* cloth.

The STATUTES IN FORCE relating to the POOR LAWS, to BOARDS OF GUARDIANS, DISTRICT SCHOOL and ASYLUM MANAGERS, OVERSEERS, and the LOCAL GOVERNMENT BOARD, from the 43 Eliz. c. 2 to 35 & 36 Vict. c. 93; together with Digests of the Decisions of the Courts upon each Statute. By WILLIAM CUNNINGHAM GLEN, Barrister at Law.

BAR EXAMINATION JOURNAL.

Edited by A. D. TYSSEN, B.C.L., M.A. and R. K. WILSON, M.A.,
Barristers at Law.

Nos. 1, 2, 3, 4 & 5, TRIN. & MICHS 1871, TRIN. & MICHS. 1872, and TRIN. 1873.

Published in Numbers, 8vo., at 3s. each, by post 3s. 1d., in Trinity and Michaelmas Terms in each year.

Subjects of Bar Examination. Examination Papers, with *the Answers.*

ENGLISH LAW:—Constitutional Law and Legal History; Equity; Common Law; Real Property; Jurisprudence, &c.; General Paper.
INDIAN LAW:—Hindu Law; Mahomedan Law; Penal Code; Criminal Procedure Code; Civil Procedure Code; Succession Act; General Paper.

Powell on Evidence.—Third Edition by Cutler & Griffin.

12mo., 16*s.* cloth.

THE PRINCIPLES and PRACTICE of the LAW of EVIDENCE. By EDMUND POWELL, M.A., of the Inner Temple, Barrister at Law. Third Edition by JOHN CUTLER, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London; and EDMUND FULLER GRIFFIN, B.A., of Lincoln's Inn, Barrister at Law. To which is added a SUPPLEMENT containing the alterations in the Law of Evidence to Michaelmas, 1869.

The Supplement may be had separately price 1*s.* sewed.

*** *Although in this work the most important decisions only are quoted, and as a rule but one authority is given for each proposition, yet there are nearly 400 cases cited therein which do not appear in the table of cases prefixed to the latest edition of "Taylor on Evidence."*

Holland on the Form of the Law.

8vo., 7*s.* 6*d.* cloth.

ESSAYS upon the FORM of the LAW. By THOMAS ERSKINE HOLLAND, M.A., Fellow of Exeter College, Oxford, and of Lincoln's Inn, Barrister at Law.

"A work of great ability."—*Athenæum.*

"Entitled to very high commendation."—*Law Times.*

"The essays of an author so well qualified to write upon the subject."—*Law Journal.*

"We can confidently recommend these essays to our readers."—*Law Magazine.*

"A work in which the whole matter is easily intelligible to the lay as well as the professional public."—*Saturday Review.*

"Mr. Holland's extremely valuable and ingenious essays."—*Spectator.*

Redman's Law of Arbitrations and Awards.

8vo., 12*s.* cloth.

A CONCISE TREATISE on the LAW of ARBITRATIONS and AWARDS, with an Appendix of Precedents and Statutes. By JOSEPH HAWORTH REDMAN, of the Middle Temple, Esq., Barrister-at-Law.

"Mr. Redman goes straight through his task, and gives his cases at the end of his propositions. The chief merit of the work is the singular lucidity with which the law is expounded. We give the work all the praise which it can claim when we say that the arrangement is good, the style clear, and the work exhaustive. There is a useful appendix of precedents and statutes, and a very good index."—*Law Times.*

"This is likely to prove a useful book in practice. All the ordinary law on the subject is given shortly and in a convenient and accessible form, and the index is a good one. The book is of a portable size and moderate price, and contains a fairly complete appendix of precedents. It is likely enough that it will meet a demand both in the profession and amongst lay arbitrators."—*Solicitors' Journal.*

"It is a concise statement of the law on the questions which are likely to arise in the course of a reference or in subsequent proceedings which may be taken in regard to it. The precedents of awards are clearly and concisely drawn. The arrangement of chapters is conveniently managed. The law is clearly stated, and, so far as we can judge, all the important cases bearing directly on the subject are given, while the index appears reasonably copious. These facts, combined with the smallness of the volume, ought to make the book a success."—*Law Journal.*

Powell's Law of Inland Carriers.—Second Edition.

8vo., 14*s.* cloth.

THE LAW OF INLAND CARRIERS, especially as regulated by the Railway and Canal Traffic Act, 1854. By EDMUND POWELL, Esq., of Lincoln College, Oxon, M.A., and of the Western Circuit, Barrister at Law, Author of "Principles and Practice of the Law of Evidence." Second Edition, almost re-written.

"Mr Powell's writing is singularly precise and condensed, without being at all dry, as those who have read his admirable Book of Evidence will attest. It will be seen, from our outline of the contents, how exhaustively the subject has been treated, and that it is entitled to be, that which it aspires to become, the text book on the Law of Carriers."—*Law Times.*

"The two chapters on the Railway and Canal Traffic Act, 1856, are quite new, and the recent cases under the provisions of that statute are analysed in lucid language."—*Law Magazine.*

Wigram on Extrinsic Evidence as to Wills.

Fourth Edition. 8vo., 11*s.* cloth.

AN EXAMINATION OF THE RULES OF LAW respecting the Admission of EXTRINSIC EVIDENCE in Aid of the INTERPRETATION OF WILLS. By the Right Hon. Sir JAMES WIGRAM, Knt. The Fourth Edition, prepared for the press with the sanction of the learned Author, by W. KNOX WIGRAM, M.A., of Lincoln's Inn, Esq., Barrister-at-Law.

"In the celebrated treatise of Sir James Wigram, the rules of law are stated, discussed and explained in a manner which has excited the admiration of every judge who has had to consult it."—*Lord Kingsdown, in a Privy Council Judgment, July 8th*, 1858.

Williams's Common Law Pleading and Practice.

8vo., 12*s.* cloth.

An INTRODUCTION to PRACTICE and PLEADING in the SUPERIOR COURTS of LAW, embracing an outline of the whole proceedings in an Action at Law, on Motion, and at Judges' Chambers; together with the Rules of Pleading and Practice, and Forms of all the principal Proceedings. By WATKIN WILLIAMS, Esq., M.P., of the Inner Temple, Barrister at Law.

"For the Student especially the book has features of peculiar value, it is at the same time scientific and practical, and throughout the work there is a judicious union of general principles with a practical treatment of the subject, illustrated by forms and examples of the main proceedings."—*Jurist.*

Bainbridge's Law of Mines and Minerals.—3rd Edit.

8vo., 30*s.* cloth.

A TREATISE on the LAW of MINES and MINERALS. By WILLIAM BAINBRIDGE, Esq., F.G.S., of the Inner Temple, Barrister at Law. Third Edition, carefully revised, and much enlarged by additional matter relating to manorial rights—rights of way and water and other mining easements—the sale of mines and shares—the construction of leases—cost book and general partnerships—injuries from undermining and inundations—barriers and working out of bounds. With an Appendix of Forms and Customs and a Glossary of English Mining Terms.

"When a work has reached three editions, criticism as to its practical value is superfluous. We believe that this work was the first published in England on the special subject of mining law—others have since been published—but we see no reason in looking at the volume before us to believe that it has yet been superseded."—*Law Magazine.*

"Mr. Bainbridge was we believe the first to collect and publish, in a separate treatise, the Law of Mines and Minerals, and the work was so well done that his volume at once took its place in the law library as the text book on the subject to which it was devoted. This work must be already familiar to all readers whose practice brings them in any manner in connection with mines or mining, and they well know its value. We can only say of this new edition that it is in all respects worthy of its predecessors."—*Law Times.*

"It would be entirely superfluous to attempt a general review of a work which has for so long a period occupied the position of the standard work on this important subject. Those only who, by the nature of their practice, have learned to lean upon Mr. Bainbridge as on a solid staff, can appreciate the deep research, the admirable method, and the graceful style of this model treatise."—*Law Journal.*

Field's Table of, and Index to, Indian Statute Law.

Demy 4to., 42*s.* cloth.

A CHRONOLOGICAL TABLE of and INDEX to the INDIAN STATUTE-BOOK from the Year 1834, with a General Introduction to the Statute Law of India; with a SUPPLEMENT bringing the work down to August, 1872. By C. D. FIELD, M.A., LL.D., of the Inner Temple, Barrister at Law, and of H.M.'s Bengal Civil Service.

"Mr. Field has produced a work which will be extremely useful, not only to the profession in India, but to those practising in the Privy Council at home."—*Solicitors' Journal.*

Cutler and Griffin's Indian Criminal Law.

8vo. 6*s.* cloth.

AN ANALYSIS of the INDIAN PENAL CODE (including the Indian Penal Code Amendment Act, 1870), with Notes. By JOHN CUTLER, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London, and EDMUND FULLER GRIFFIN, B.A., of Lincoln's Inn, Barrister at Law.

"It may be added that the code is just at at present out of print, so that the production of an analysis at the present moment is especially opportune. Messrs. Cutler and Griffin have produced a useful little book, and produced it at a time when it will be especially useful."—*Solicitors' Journal.*

"This analysis of the Indian Penal Code seems to have conferred a great boon on the Indian practitioner, and will doubtless be of use to professional men in England. It has a good index."—*Law Magazine.*

"This is a work intended for students and for practitioners in India. Knowing how well the same authors edited the Indian portion of Powell on Evidence, we should be content to take it on the faith of their reputation only. The mode of analysis is very clear and brings well forward the prominent features of the code."—*Law Times.*

Field's Law of Evidence in British India.

8vo., 28*s.* cloth.

THE LAW OF EVIDENCE AS ADMINISTERED IN BRITISH INDIA. By C. D. FIELD, LL.D., of the Inner Temple, Barrister at Law, and of H. M.'s Bengal Civil Service. Second Edition, containing the New Code of Evidence passed by the Legislative Council of India.

"It is worthy of the law of which it treats, and it is made additionally and exceptionally valuable by an introduction, which is an original essay on evidence in general and Indian evidence in particular. We do not think that any better recommendation could be given to persons contemplating the practice of the law in India than to procure Mr. Field's work and master it."—*Law Times.*

Davis's Criminal Law Consolidation Acts.

12mo., 10*s.* cloth.

THE NEW CRIMINAL LAW CONSOLIDATION ACTS, 1861; with an Introduction and practical Notes, illustrated by a copious reference to Cases decided by the Court of Criminal Appeal. Together with alphabetical Tables of Offences, as well those punishable upon Summary Conviction as upon Indictment, and including the Offences under the New Bankruptcy Act, so arranged as to present at one view the particular Offence, the Old or New Statute upon which it is founded, and the Limits of Punishment; and a full Index. By JAMES EDWD. DAVIS, Esq., Barrister-at-Law.

Smith's Bar Education.

8vo., 9*s.* cloth.

A HISTORY of EDUCATION for the ENGLISH BAR, with SUGGESTIONS as to SUBJECTS and METHODS of STUDY. By PHILIP ANSTIE SMITH, Esq., M.A., LL.B., Barrister-at-Law.

The Law and Facts of the Alabama Case, with Reference to the Geneva Arbitration. By JAMES O'DOWD, Esq., Barrister at Law. 8vo. 2*s.* sewed.

Foreshores. Report of case The Queen at the prosecution of Williams *v.* Nicholson, for removing Shingle from the Foreshore at Withernsea. Heard at the Police Court, Hull, 31st May, 1870. 8vo. 1*s.* sewed.

A Letter to the Right Hon. the Lord High Chancellor concerning Digests and Codes. By WILLIAM RICHARD FISHER, of Lincoln's Inn, Esq., Barrister at Law. Royal 8vo. 1*s.* sewed.

Indian Civil Service Examinations. On reporting Cases for the Periodical Examinations by Selected Candidates for the Civil Service of India: Being a Lecture delivered on Wednesday, June 12, 1867, at King's College, London. By JOHN CUTLER, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence and Professor of Indian Jurisprudence at King's College, London. 8vo., 1*s.* sewed.

Cutler's Voluntary and other Settlements, including the 91st section of the Bankruptcy Act, 1869. By JOHN CUTLER, B.A., of Lincoln's Inn, Esq., Barrister at Law. 8vo. 3*s.* cloth.

Hamel's International Law, in connexion with Municipal Statutes relating to the Commerce, Rights and Liabilities of the Subjects of Neutral States pending Foreign War; considered with reference to the Case of the Alexandra, seized under the provisions of the Foreign Enlistment Act. By FELIX HARGRAVE HAMEL, Barrister at Law. Post 8vo. 3*s.* boards.

Francillon's Lectures, Elementary and Familiar, on English Law. FIRST and SECOND SERIES. By JAMES FRANCILLON, Esq., County Court Judge. 2 vols. 8vo. 8*s.* each cloth.

Pearce's Guide to the Inns of Court and Chancery; with Notices of their Ancient Discipline, Customs and Entertainments; an Account of the Eminent Men of Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn, &c.; together with the Regulations as to the Admission of Students, Keeping Terms, Call to the Bar, &c. By ROBERT R. PEARCE, Esq., Barrister at Law. 8vo. 8*s.* cloth.

The Laws of Barbados. (By Authority.) Royal 8vo. 21s. cloth.

Le Marchant's Report of Proceedings of the House of Lords on the Claims to the Barony of Gardner, with an Appendix of Cases illustrative of the Law of Legitimacy. By Sir DENIS LE MARCHANT, of Lincoln's Inn, Barrister at Law. 8vo. 18*s.* boards.

Norman's Treatise on the Law and Practice relating to Letters Patent for Inventions. By J. P. NORMAN, M.A., Barrister at Law. Post 8vo., 7*s.* 6*d.* cloth.

Gray's Treatise on the Law of Costs in Actions and other Proceed- ings in the Courts of Common Law at Westminster. By JOHN GRAY, Esq., of the Middle Temple, Barrister at Law. 8vo., 21*s.* cloth.

Elements of the Logical and Experimental Sciences considered in their relation to the Practice of the Law. 8vo. 14*s.* boards.

Remarks on Law Reform. By G. W. M. Dale, of Lincoln's Inn, Esq. 8vo. 1*s.* 6*d.* sewed.

Law Students. Full Report of the Proceedings of the First General Congress of Law Students' Societies, held at Birmingham 21st and 22nd May, 1872. 8vo. 2*s.* sewed.

Legal Education. By W. A. Jevons. A Paper read at the Social Science Congress at Leeds. 1871. 8vo. 6*d.* sewed.

A Memoir of Lord Lyndhurst. By William Sidney Gibson, Esq., M.A., F.S.A., Barrister at Law, of Lincoln's Inn. Second edition, enlarged. 8vo. 2*s.* 6*d.* cloth.

A Memoir of Mr. Justice Talfourd. By a Member of the Oxford Circuit. Reprinted from the Law Magazine. 8vo. 1*s.* sewed.

Speech of Sir R. Palmer, Q.C., M.P., at the Annual Meeting of the Legal Education Association in the Middle Temple Hall, 1871; with a Report of the Proceedings. 8vo. 1*s.* sewed.

The Ancient Land Settlement of England. A Lecture delivered at University College, London, October 17th, 1871. By J. W. Willis Bund, M.A., Professor of Constitutional Law and History. 8vo. 1*s.* sewed.

The Practice of the Ecclesiastical Courts, with Forms and Tables of Costs. By H. C. Coote, F.S.A., Proctor in Doctors' Commons, &c. 8vo. 28*s.* boards.

Baker's Compendium of the Statutes, Cases and Decisions af-fecting the Office of Coroner. By William Baker, Coroner of Middlesex. 12mo. 7*s.* cloth.

Greening's Forms of Declarations, Pleadings and other Pro-ceedings in the Superior Courts of Common Law, with the Common Law Procedure Act, and other Statutes; Table of Officers' Fees; and the New Rules of Practice and Pleading, with Notes. By Henry Greening, Esq., Special Pleader. Second Edition. 12mo. 10*s.* 6*d.* boards.

Bowditch's Treatise on the History, Revenue Laws, and Govern-ment of the Isles of Jersey and Guernsey, to which is added the recent Acts as to Smuggling, Customs and Trade of the Isle of Man and the Channel Islands, Forms, Costs, &c. By J. Bowditch, Solicitor. 8vo. 3*s.* 6*d.* sewed.

Pulling's Practical Compendium of the Law and Usage of Mercantile Accounts: describing the various Rules of Law affecting them, at Common Law, in Equity, Bankruptcy and Insolvency, or by Arbitration. Containing the Law of Joint Stock Companies' Accounts, and the Legal Regulations for their Adjustment under the Winding-up Acts of 1848 and 1849. By Alexander Pulling, Esq. of the Inner Temple, Barrister at Law. 12mo. 9*s.* boards.

Leigh's Abridgment of the Law of Nisi Prius. By P. Brady Leigh, of the Inner Temple, Barrister at Law. 2 vols. 8vo. £2 : 8*s.* boards.

Gurney's System of Short Hand. By Thomas Gurney. First published in 1740, and subsequently improved. 17th Edition. 12mo. 3*s.* 6*d.* cloth.

"Gurney's is, we believe, admitted to be the best of the many systems, and a seventeenth edition appears to attest that fact."—*Law Times.*

Washburn's Law of Easements. (Boston, U. S.) 1 vol. royal 8vo. £1 : 2*s.* 6*d.* cloth.

Linklater's Digest of, and Index to, the New Bankruptcy Act, 1869, and the accompanying Acts. By John Linklater, Solicitor. Second Edition. Imperial 8vo., 3*s.* 6*d.* sewed.

Moseley's Law of Contraband of War; comprising all the American and English Authorities on the Subject. By Joseph Moseley, Esq., B.C.L., Barrister at Law. Post 8vo. 5*s.* cloth.

Dr. Deane's Law of Blockade, as contained in the Judgments of Dr. Lushington and the Cases on Blockade decided during 1854. By J. P. Deane, D.C.L., Advocate in Doctors' Commons. 8vo. 10*s.* cloth.

Chart of Inheritance according to the Bengal School of Hindu Law. By C. D. FIELD, LL.D., Barrister at Law, Author of "The Law of Evidence in British India." On stiff card, 5*s*.

The Acts for the Commutation of Tithes in England and Wales, with Notes, Observations, and an Epitome of the Law of Tithes. Second Edition. By J. T. SCHOMBERG, Esq., Q.C. 12mo. 7*s*. cloth.

A Practical Treatise on Life Assurance; in which the Statutes, &c., affecting unincorporated Joint Stock Companies are briefly considered and explained. SECOND EDITION. By FREDERICK BLAYNEY, Esq., Author of "A Treatise on Life Annuities." 12mo. 7*s*. boards.

Sewell's Treatise on the Law of Sheriff, with Practical Forms and Precedents. By RICHARD CLARKE SEWELL, Esq., D.C.L., Barrister at Law. 8vo. 21*s*. boards.

The Law relating to Transactions on the Stock Exchange. By HENRY KEYSER, Esq., Barrister at Law. 12mo., 8*s*. cloth.

Sewell's Municipal Corporation Acts, 5 & 6 Will. 4, c. 76, and 6 & 7 Will. 4, cc. 103, 104, 105, with Notes, and Index. By R. C. SEWELL, Esq., Barrister at Law. 12mo. 9*s*. boards.

A Legigraphical Chart of Landed Property in England from the time of the Saxons to the present Æra. By CHARLES FEARNE, Esq., Barrister at Law. On a large sheet, 6*s*. coloured.

Dwyer's Compendium of the Principal Laws and Regulations relating to the Militia of Great Britain and Ireland 12mo. 5*s*. 6*d*. cloth.

The Common Law of Kent; or the Customs of Gavelkind. With an Appendix concerning Borough English. By T. ROBINSON, Esq. THIRD EDITION, with Notes and References to modern Authorities, by JOHN WILSON, Esq. Barrister at Law. 8vo. 18*s*. boards.

The Marriage and Registration Acts, 6 & 7 Will. 4, caps. 85, 86; with Instructions, Forms, and Practical Directions. The Acts of 1837, viz. 7 Will. 4, c. 1, and 1 Vict. c. 22, with Notes and Index. By J. S. BURN, Esq., *Secretary to the Commission.* 12mo. 6*s*. 6*d*. boards.

A Treatise on the Law of Gaming, Horse-Racing, and Wagers. By FREDERIC EDWARDS, Esq., Barrister at Law. 12mo. 6*s*. cloth.

A Digest of Principles of English Law; arranged in the order of the Code Napoleon, with an Historical Introduction. By GEORGE BLAXLAND, Esq. Royal 8vo. £1 : 4*s*. boards.

A Treatise on the Law of Commerce and Manufactures, and the Contracts relating thereto; with an Appendix of Treaties, Statutes, and Precedents. By JOSEPH CHITTY, Esq. Barrister at Law. 4 vols. royal 8vo. £6 : 6*s*. boards.

Anstey's Pleader's Guide; a Didactic Poem, in Two Parts. The Eighth Edition. 12mo. 7*s*. boards.

Hardy's Catalogue of Lords Chancellors, Keepers of the Great Seal, and Principal Officers of the High Court of Chancery. By THOMAS DUFFUS HARDY, Principal Keeper of Records. Royal 8vo. 20*s*. cloth. (Only 250 copies printed.)

Pothier's Treatise on the Contract of Partnership: with the Civil Code and Code of Commerce relating to this Subject, in the same Order. Translated from the French. By O. D. TUDOR, Esq., Barrister. 8vo., 5*s*. cloth.

Browne's Practical Treatise on Actions at Law, embracing the subjects of Notice of Action; Limitation of Actions; necessary Parties to and proper Forms of Actions, the Consequence of Mistake therein; and the Law of Costs with reference to Damages. By R. J. BROWNE, Esq., of Lincoln's Inn, Special Pleader. 8vo., 16*s*. boards.

Ecclesiastical Law.

The Case of the Rev. G. C. Gorham against the Bishop of Exeter, as heard and determined by the Judicial Committee of the Privy Council on appeal from the Arches Court of Canterbury. By EDWARD F. MOORE, Esq., M.A., Barrister at Law; Author of Moore's Privy Council Reports. Royal 8vo. 18*s.* cloth.

Archdeacon Hale's Essay on the Union between Church and State, and the Establishment by Law of the Protestant Reformed Religion in England, Ireland, and Scotland. By W. H. HALE, M.A., Archdeacon of London. 8vo. 1*s.* sewed.

"This is the production of a very able man, and will be read by lawyers as well as by divines with interest and advantage."—*Law Magazine.*

The Judgment of the Privy Council on Appeal in the Case of Hebbert *v.* Purchas. Edited by EDWARD BULLOCK, of the Inner Temple, Barrister at Law, Reporter in Privy Council for the Law Journal Reports. Royal 8vo., 2*s.* 6*d.* sewed.

Burder *v.* Heath. Judgment delivered on November 2, 1861, by the Right Honorable STEPHEN LUSHINGTON, D.C.L., Dean of the Arches. Folio, 1*s.* sewed.

The Case of Long *v.* Bishop of Cape Town, embracing the opinions of the Judges of Colonial Court hitherto unpublished, together with the decision of the Privy Council, and Preliminary Observations by the Editor. Royal 8vo., 6*s.* sewed.

The Judgment of the Dean of the Arches, also the Judgment of the PRIVY COUNCIL, in Liddell (clerk), and Horne and others against Westerton, and Liddell (clerk) and Park and Evans against Beal. Edited by A. F. BAYFORD, LL.D.: and with an elaborate analytical Index to the whole of the Judgments in these Cases. Royal 8vo., 3*s.* 6*d.* sewed.

The Judgment of the Right Hon. Stephen Lushington, D.C.L., in the Consistory Court of the Bishop of London in the Cases of Westerton *v.* Liddell (clerk), and Horne and others, and Beal *v.* Liddell (clerk), and Park and Evans, on December 5th, 1855. Edited by A. F. BAYFORD, D.C.L. Royal 8vo., 2*s.* 6*d.* sewed.

Hamel's Law of Ritualism in the United Church of England and Ireland. With Practical Suggestions for Amendment of the Law, and a Form of Bill for that purpose. By F. HARGAVE HAMEL, Esq., of the Inner Temple, Barrister at Law. Post 8vo. 1*s.* sewed.

The Judgment delivered by the Right Hon. Sir Robert Phillimore, D.C.L., Official Principal of the Court of Arches, in the Cases of Martin *v.* Mackonochie and Flamank *v.* Simpson. Edited by WALTER G. F. PHILLIMORE, B.A., of the Middle Temple, Fellow of All Souls College, and Vinerian Scholar, Oxford. Royal 8vo. 2*s.* 6*d.* sewed.

Judgment delivered by the Right Hon. Lord Cairns on behalf of the Judicial Committee of the Privy Council in the case of Martin *v.* Mackonochie. Edited by W. ERNST BROWNING, Barrister at Law. Royal 8vo. 1*s.* 6*d.* sewed.

The Privilege of Religious Confessions in English Courts of Justice considered in a Letter to a Friend. By EDWARD BADELEY, Esq., M.A., Barrister at Law. 8vo. 2*s.* sewed.

New Works and New Editions in Preparation.

Davis's Practice and Evidence in Actions in the County Courts. The Fifth Edition. In 1 vol. 8vo.

*** *This is the only work on the County Courts which gives Forms of Plaints, and treats fully of the Law and Evidence in Actions and other Proceedings in these Courts.*

(*For* Davis's Practice of the County Courts in Equity, Admiralty, Bankruptcy, &c., *see page* 5.)

A Compendium of the Laws of Joint Stock Companies of Foreign Countries, and especially those of GERMANY, FRANCE, SPAIN, ITALY and RUSSIA; with copious Notes and References. By HENRY D. JENCKEN, Lincoln's Inn, Barrister-at-Law. In 8vo.

A Collection of Mortgage Precedents and Forms of Decrees, intended as a Companion Volume to the General Law of Mortgage.—By W. R. FISHER, Esq., of Lincoln's Inn, Barrister at Law. In 1 vol. royal 8vo.

A Complete Code of the Law of Marine Insurance, embracing every variation of Principle, in England and America. By F. O. CRUMP, of the Middle Temple, Esq., Barrister at Law. In 1 vol. 8vo.

The Law Examination Journal and Law Student's Magazine. Published every Term. (See page 7.)

The Preliminary Examination Journal and Student's Literary Magazine. Published after every Preliminary Examination. (See page 40.)

The Bar Examination Journal. Published in Trinity and Michaelmas Terms in each Year. (See page 32.)

Imprinted at London,

nvmber Seuen in Flete strete within Temple barre,
whylom the signe of the Hande and starre,
and the Hovse where liued Richard Tottel,
printer bp Special patents of the bokes of the Common lawe
in the seueral Reigns of
Kng Edw. VI. and of the qvenes Marye and Elizabeth.

Price 1*s.*, *by post* 1*s.* 1*d.*, *regularly published as soon as practicable after each Preliminary Examination in February, May, July and October,*

The Preliminary Examination Journal
AND STUDENT'S LITERARY MAGAZINE.

Edited by JAMES ERLE BENHAM, formerly of King's College London; Author of "The Student's Examination Guide," &c.

CONTENTS OF No. XII.—October, 1873.

I. Special Examination Notices for 1874.—II. Eminent Lawyers.—III. Rhetoric.—IV. A Summary of the Law of Torts: a Review.—V. The Questions of the Preliminary Examination of the 29th and 30th of October, with the Answers.—VI. Review of the October Examination, and suggestions as to preparation for the next.—VII. Answers to Correspondents, &c.

CONTENTS OF No. XI.—July, 1873.

I. Special Examination Notices for Michaelmas Term.—II. Psychological Enquiries.—III. Our Note-Books.—IV. A Few Remarks on the Study of the Latin Language.—V. Recollections of Ancient Classical Writers—*continued*.—VI. The Questions of the Preliminary Examination of the 16th and 17th of July, with the Answers.—VII. Review of the July Examination.—VIII. Correspondence.

CONTENTS OF No. X.—May, 1873.

I. Special Examination Notices.—II. Ladies as Lawyers!—III. Common Sense.—IV. The Advantage of Education.—V. Reviews of New Books, &c.—VI. Part I. Recollections of Ancient Classical Writers. Part II. Memoirs of Charles Dickens, Lord Lytton, the late Mr. John Stuart Mill.—VII. The Questions of the Preliminary Examination of the 14th and 15th of May, with the Answers.—VIII. Review of the May Examination.—IX. Correspondence.

CONTENTS OF No. IX.—February, 1873.

I. Examination Notices.—II. The Amalgamation of the two Branches of the Profession.—III. Special Preparation for Examinations.—IV.—The Power of Imagination!—V. Institutes of English Public Law: a Review.—VI. Synopsis of leading Authors, Statesmen, Poets and Philosophers.—VII. The Questions of the Preliminary Examination of the 12th and 13th of February, with the Answers.—VIII. Review of the February Examination.—IX. Correspondence.

CONTENTS OF No. VIII.—October, 1872.

I. Special Examination Notices for 1873.—II. "What Leads to Success in Life?"—III. Brains—Quantity or Quality.—IV. A Retrospective Glance.—V. Remarks on "Memory" (continued).—VI. Synopsis of leading Authors, Statesmen, Poets, and Philosophers (the List includes Memoirs of Thackeray, Sir G. C. Lewis, Admiral Fitzroy and several others).—VII. The Questions of the Preliminary Examination of the 30th and 31st of October, with the Answers.—VIII. Review of the October Examination.—IX. Correspondence.

CONTENTS OF No. VII.—July, 1872.

I. Special Examination Notices for Michaelmas Term, 1872.—II. "How many Hours a Day do you recommend me to study?"—III. Critical Reviews.—IV. A few Remarks on the Improvement of the Memory.—V. Synopsis of leading Authors, Statesmen, Poets and Philosophers (the List includes Notices of Lord Byron, Sir Robert Peel, Lord Macaulay and several others). VI. The Questions of the Preliminary Examination of the 17th and 18th of July, with the Answers.—VII. Review of the July Examination.—VIII. Correspondence.

CONTENTS OF No. VI.—May, 1872.

I. Special Examination Notice.—II. How to become an Orator; with Selections from the Speeches of Lord Brougham, Pitt, Curran, Daniel O'Connell, Burke, the late Earl of Derby, Mr. Gladstone, Mr. Disraeli and others.—III. Synopsis of leading Authors, Statesmen, Poets and Philosophers.—IV. The Questions of the Preliminary Examination of the 15th and 16th of May, with the Answers.—V. Review of the May Examination.—VI. Correspondence.

CONTENTS OF No. V.—February, 1872.

I. Examination Notices for 1872.—II. The Latin Language; the value of a knowledge of; its pronunciation, &c.—III. A few Remarks on the Study of French.—IV. Synopsis of leading Authors, Statesmen, Poets and Philosophers.—V. The Questions of the Preliminary Examination of the 14th and 15th of February, with the Answers.—VI. Review of the February Examination.—VII. Correspondence.

CONTENTS OF No. IV.—October, 1871.

I. Examination Notices, &c.—II. What Endowments are essential to those aspiring to become Barristers and Solicitors?—III. Lectures on Language: Part III.—IV. Synopsis of Leading Authors, Statesmen, Poets and Philosophers.—V. The Questions of the Preliminary Examination held on the 25th and 26th days of October, 1871, with the Answers.—VI. Review of the October Examination.—VII. Correspondence.

CONTENTS OF No. III.—July, 1871.

I. Miscellaneous Notices and Reviews.—II. Lectures on Language. Part II.—III. Synopsis of leading Authors, Statesmen Poets and Philosophers.—IV. The Questions of the Preliminary Examination held on the 12th and 13th days of July, 1871, with the Answers.—V. Review of the July Examination.—VI. Correspondence.

CONTENTS OF No. II.—May, 1871.

I. Miscellaneous Notices and Reviews of Educational Works.—II. Lectures on Language.—III. Synopsis of leading Authors, Statesmen, Poets and Philosophers.—IV. The Questions of the Preliminary Examination held on the 10th and 11th days of May, 1871, with the Answers.—V. Review of the May Examination and Remarks on the Study of English History.—VI. Correspondence.

CONTENTS OF No. I.—February, 1871.

I. Introductory Remarks and Review of the past Examinations.—II. Essay on the Imperfections of the Orthography of the English Language.—III. Synopsis of Leading Authors, Statesmen, Poets and Philosophers.—IV. The Questions of the Preliminary Examination held on the 15th and 16th days of February, 1871, with the Answers.—V. Review of the February Examination, and names of best books to be studied.—VI. Correspondence.

Mr. Oke's Magisterial Works.

Oke's Laws as to Licensing Inns, &c. &c.: containing the Licensing Act, 1872, and the other Acts in force as to Alehouses, Beer Houses, Wine and Refreshment Houses, Shops, &c. for the Sale of Intoxicating Liquors, and Billiard and Occasional Licenses. Systematically arranged, with Explanatory Notes, the authorized Forms of Licenses, Tables of Offences, Duties, &c. By Graham C. Oke, Chief Clerk to the Lord Mayor of London. Post 8vo. 10s. cloth.

*** By this Act transport will be for life, and a minimum of seven years' penal servitude substituted for fourteen years' transportation.

*** We advise all who have anything to do with licensed houses to get this book, as they will find it very useful to save them from the frequent penalties consequent upon the New Statute.

Oke's Magisterial Synopsis; a Practical Guide for Magistrates, their Clerks, Attorneys, and Constables: Summary Convictions and Indictable Offences, with their Penalties, Punishments, Procedure, &c., being *alphabetically and similarly arranged with a Common Law Section. Eleventh Edition, much enlarged.* By Graham C. Oke, Chief Clerk to the Lord Mayor of London. In 1 vol. 8vo. 30s. cloth.

Oke's Magisterial Formulist; being a Complete Collection of Forms and Precedents for proceedings out of Sessions, with Practical Notes to Magistrates, their Clerks, Attorneys, and Constables. By Graham C. Oke, Author of "The Magisterial Synopsis," &c. Second Edition, enlarged and improved. 8vo. 30s. cloth.

Oke's Handy Book of the Game and Fishery Laws; containing the whole Code of Game Laws and Regulations, Summary Proceedings, Trespass, Setting Dogs, Lying, Angling and Poaching throughout the United Kingdom, also Trout and Salmon Fishing, Close and Weekly Seasons, &c. Systematically arranged with the Acts, Decisions, Notes, Summonses, &c. By Graham C. Oke, Author of "The Magisterial Synopsis," &c. Second Edition. Crown 8vo. 6s. cloth.

Oke's Law of Turnpike Roads; comprising the whole

Law Works for Students.

Mr. Serjeant Stephen's New Blackstone's Commentaries. Seventh Edition. By James Stephen, Esq., LL.B., Judge of County Courts, &c. 4 vols. 8vo. 4l. 4s. cloth.

Underhill's Law of Torts or Wrongs. Post 8vo. 6s. cl.

Seaborne's Manual of the Law of Vendors and Purchasers. Post 8vo. 7s. cloth.

Kelly's Conveyancing Draftsman. Post 8vo. 6s. cloth.

Goldsmith's Doctrine and Practice of Equity. Sixth Edition. Post 8vo. 10s. cloth.

Morris's Articled Clerks' Handy-Book. 12mo. 7s. cl.

Bonham's Student's Examination Guide. 12mo. 3s. cl.

Bedford's Intermediate Examination Guide. 12mo. 3s. cl.

Lewis's Principles of Leasey Drafting; with Forms. By Harvey Lewis, Esq., Barrister-at-Law. Post 8vo. 10s. cloth.

Lewis's Principles of Conveyancing explained and Illustrated by Concise Precedents. 12mo. 7s. cloth.

Barry's Treatise on the Practice of Conveyancing. By W. W. Barry, Esq., of Lincoln's Inn, Barrister-at-Law. 12mo. 10s. cloth.

Kerr's Action at Law. Third Ed. 12mo. 10s. cloth.

Hunter's Suit in Equity, with Forms. Second Edition. By W. Hastings, Barrister-at-Law. Post 8vo. 10s. cloth.

Turner's Outline's Analysis of Indian Penal Code. 12mo. 6s. cl.

Hancock's Constitution of English Public Law. 12mo. 7s. cl.

M. Cuq's History of Roman Law, translated by [illegible]. Post 8vo. 10s. cloth.

The Bar Examination Journal, containing [illegible]. 1s. each.

The Law Examination Journal and Law Student's [illegible]. 1s. each.

The Preliminary Examination Journal and Student's [illegible]. 1s. each.